ORATION

ON THE

ABSOLUTE NECESSITY OF UNION,

AND THE

Folly and Madness of Disunion.

DELIVERED

FOURTH OF JULY, 1809.

BY THOMAS S. GRIMKÉ.

SPEECH

OF THOMAS S. GRIMKÉ,

DELIVERED

IN DECEMBER, 1828,

ON

The Constitutionality of the Tariff,

AND

ON THE TRUE NATURE

OF STATE SOVEREIGNTY,

BOTH DEDICATED

To the People of South-Carolina.

Charleston.
PRINTED BY W. RILEY, 110 CHURCH-STREET.

1829.

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AN

ORATION,

DELIVERED

IN ST. PHILIP'S CHURCH,

BEFORE THE

INHABITANTS OF CHARLESTON,

ON THE

FOURTH OF JULY, 1809,

BY THE APPOINTMENT OF THE

South Carolina State Society of Cincinnati,

AND

Published at the request of that Society, and of the American Revolution Society.

BY THOMAS S. GRIMKÉ,
MEMBER OF THE CINCINNATI.

"The unity of government, which constitutes you one people, is a main pillar in the edifice of your real independence; the support of your tranquility at home, your peace abroad; of your safety; of your prosperity; of that very liberty, which you so highly prize."—*Washington's Valedictory Address.*

"Nam quâcunque prius de parti —— cesse
"Constitues, hæc rebus erit pars janua lethi."—*Lucr.*

CHARLESTON.
RE-PRINTED BY WM. RILEY, 110 CHURCH-STREET.
1829.

TO THE

PEOPLE OF SOUTH-CAROLINA.

Fellow Citizens,

In republishing, for the purpose of dedicating to you, an Oration written twenty years ago, in favour of the wisdom and expediency of UNION, and against the folly and madness of DISUNION, I trust that the present crisis will be my best apology.

I have gathered from the experience and reflections of twenty years, the most ample confirmation of every argument and opinion, in the following composition. I lay before you, at the same time, the sentiments of the young man, just entering on the business of life, and glowing with the ardent feelings of early manhood; and those of the same person, in the maturity of years, earnestly and affectionately vindicating the same cause, the Union of these States. May he stand absolved, at the tribunal of his Country, from all imputations, unworthy of the Carolinian and the American. For myself, I feel, that fortune and happiness, yea, even life itself, would lose their chief value, if these States, though Christian and educated communities, should ever cease to be UNITED. Our Country would then no longer be the land of Peace, Forbearance and Brotherly love; of mutual emulation and improvement; of a common ancestry, to be reverenced, and imitated by each; and of a common posterity, to be loved and provided for by all. May that Providence, which trained us up through the infancy, childhood, and youth of colonial dependence, and which hath called us forth, at his own appointed time, a free and independent Nation, to be a light, and example, and warning to the world, never reserve for us, in the darkest hour of his wrath, the SCOURGE OF DISUNION. We must expect our trials and our chastisements, for national transgressions. We have sinned, and we shall continue to sin against the Ruler and Judge of nations. But, when our day of affliction shall overtake us, that we may then have those pure, affecting consolations, which soothe and strengthen the mourners of ONE FAMILY, ONE HOUSEHOLD, will ever be the trust and prayer

Of your Servant,
and Fellow Citizen,

THOMAS S. GRIMKÉ.

Charleston, 2d Nov. 1829.

An Oration.

SHALL the creative eye of the poet still find in the works of nature, the attractions of novelty? Shall the statesman acknowledge that political science opens a rich and spacious field for investigation, and the philosopher discover new wonders in the natural, and fresh beauties in the moral world? And shall the advocate of patriotism, the eulogist of departed worth, the orator of Independence, complain that his subject is barren and uninteresting? Do the blessings of Heaven descend on a country, more favoured than ours? Or does the world contain a nation, more strikingly distinguished? Does the wide circle of human knowledge embrace a theme more fertile than Liberty? Or the annals of history an æra, more glorious and eventful, than American Independence? While, therefore, Freedom shall be the eastern star, which guides this country to prosperity and happiness: while the energy of public virtue shall arm the citizen with fortitude, and the soldier with intrepidity: when the storied urns of our martyred heroes shall have mingled with the dust they recorded, and our Age will be hallowed with the name of antiquity, the orator of this day shall never find his subject deficient in novelty and instruction. And, when he remembers how many thousands have crimsoned with their blood, the very fields, whose harvest waves only for him; and how long the gates of peace were closed against his country, before she could establish those rights, which he rises to commemorate, what mingled emotions must agitate his bosom! Called forth on such an occasion, before such an audience, in such a place, how must the pale flame of languor and diffidence brighten into the blaze of enthusiasm and manly confidence!

Hitherto, you have heard the messenger of peace proclaiming you the favorites of Heaven, and inculcating the

sister virtues of the patriot and the Christian: or you have listened with admiration, as the statesman described the masterly schemes of policy, which he had assisted in establishing, or painted to your view the subtile machinery of government. And often, with the smile of exultation and the tear of sympathy, have you followed the laureled veteran, whilst in imagination he grasped with feeble hand, the sword of his youth, and planted again the standard of his country, on the battlements of her foes. But now, the minister of Heaven sleeps with those, over whom his benedictions were so often pronounced. The voice of the statesman of seventy-six is seldom heard, but in the trumpet of fame. And the revolutionary soldier daily meets death, with a smile, since the mould, which receives him, is sacred to freedom and to honor. Henceforth the child shall be taught to revere the spot where they repose; the stranger shall tread lightly the verdant turf which covers them; and the future historian and orator, shall visit their hallowed graves, to kindle in his bosom the admiration of virtue and the spirit of eloquence. Henceforth, the rising generation shall be called to perpetuate the blessings, secured by the wisdom and valor of their predecessors. The young man shall minister at the altar of Liberty, which his parent had built, and proclaim to assembled thousands, the glory and usefulness of their fathers.

Happy had it been for America, thrice happy for him, who addresses you this day, had the subject, which is to engage your attention, been the subject of his choice. He might then have dwelt on the influence, which our revolution has had on the world at large, or have traced its more familiar effects in our native land. He might have explained the importance of great national principles, or have unfolded the fatal consequences, which often result from their decay. But the imprudence of some and the corruption of others have forced a theme on the public ear, at which every friend to his country must start and tremble. They would efface from the tomb of Washington, its brightest inscription, "The Common Father of one Common Country." They have proclaimed aloud, that these ought to be no longer *United*

States: that the arm, which severs us, will bring salvation to America: that the constituted authority, which pronounces our national divorce, will speak with the voice of Heaven.

Could you cease to be Americans; could you rend from your hearts the feelings, which nature gave and your country has cherished; could you assume the changeful garment of the courtier, or wear the imposing mask of the hireling; you might listen unmoved to such a suggestion. But there is no communion between purity and corruption, between harmony and discord, between patriotism and treachery. When, however, the burst of indignation has subsided, strengthen the persuasion of feeling by the convictions of understanding, and build the firm resolve to be united, on the eternal basis of truth and reason. But open with the deepest awe, the volume, which contains the principles of union: reverence it, next to the temples and altars of our God: think, when you approach it, that you hear a voice from the tomb of Washington exclaiming, "the place, whereon thou standest is holy ground:" think, that you behold a flaming sword, "turning every way to guard the path to this tree of life."

Even if the impolicy of Britain had not precipitated the moment of separation, yet the time was approaching, when this country must have been free. The child, as he matures in age, assumes the dignity and independence, with the vigour of manhood: and the iron links, which bind the colony to the footstool of a Sovereign, give place to the golden chain, which secures the rights, the interest, and the glory of nations. If our Independence had sprung from the progressive operation of the great principles of society, it might be a question, whether we ought to have formed but one government, and whether we ever would. But the iron sceptre of power drew around us all one common circle of defiance, and bade us submit to one common law of universal slavery. Hence, Americans "established in war," intercourse of sentiment, and uniformity of conduct; and continued in peace "a united cause, and a united nation."

From whatever source our arguments may be drawn, and

whatever may be the chain of reasoning we pursue, still shall we find, that UNION is the vital principle of our permanent happiness. If we argue from theoretical politics, we shall see them confirmed by the testimony of experience: and if unsatisfied by these, we demand higher evidence, we shall discover it from the survey of our own country, in its domestic and foreign relations.

Speculation, even in the philosophy of mind, its peculiar province, is often deficient in clearness and uniformity, yet we know that its principles are founded on the nature of man, and have often been advantageously employed by the sagacious statesman. As the science of theoretical politics arose out of the disorders or miseries of the subject, and the errors or usurpations of the ruler, we may often resort to it with success, for the leading principles of national greatness or national degradation. Led by this glimmering light, we may arrive at many of the fundamental maxims of sound policy. This will teach us that the wider the interval between united governments and the rest of the world, the more is union the soul of their existence: that if their disunion be profitable to others, it certainly will be dangerous to themselves; and that it is easier to excite jealousy and dissension between neighbouring nations, than between different parts of the same empire. Thus also we may learn, that union promotes the great objects of government: that it multiplies, improves, and strengthens the resources of a people: and as the nature of nations and individuals is, in this respect the same, divided states are, when at peace, faithless and suspicious, and when hostile, the most bitter and destructive foes.

Unavailing, however, would solitary speculation be, were not its precepts corroborated by experience. In vain had the morning star of reason shone on the benighted scenes of human life, had it not been followed by the Sun of Revelation. Equally, in vain, would theory presume to guide us, did not its winding paths so frequently terminate in the broad road of experience. But the page of speculation is often found to be a faithful counterpart to the past, and a

prophetic anticipation of the future. Here, we shall perceive, that though danger and necessity were the origin of most confederacies, the advantages of union were the foundation of their continuance.* This salutary principle is evidenced from the conduct of monarchies, and even in the measures of savage nations, the same maxim is equally apparent. But though the stern dictates of sudden emergency have sometimes united independent nations in one common cause, let us not forget that it was under circumstances peculiarly favourable. For experience testifies that like the prophetic voice, which warned Rome of impending ruin from the Gauls, the admonitions of threatened destruction are often unavailing. If union of interest would always lead to union of power, why did not Greece, with one voice, assert her resolve to be free, when invaded by Philip? Why were not the Sabine cities allied against the usurpations of Romulus? And the states, which composed the Heptarchy, against the ambitious projects of Egbert? These examples unequivocally declare, that, when once the spirit of jealousy and the pride of sovereignty influence the counsels of independent, and especially of neighbouring nations, the appeal to public welfare, the cries of individual misery, and the claims of posterity are all disregarded.

Nor let us indulge the persuasion, that those, whom duty and interest bind together, will always stand firm and united, in the hour of a nation's peril. To what then but this, shall we attribute the want of energy and unanimity in Spain? Had all her powers been vigorously and harmoniously exerted, we might have hoped to see the progress of tyranny successfully opposed. In vain, however, on this very day, of the last year, did the junta of Seville, like our illustrious congress of '76, invoke the God of nature and of nations, to nerve their arms in battle, and enlighten their minds in coun-

* The history of the Achœan and Helvetic confederacies, furnishes a striking exemplification of this. The former, which consisted of twelve cities, and lasted 130 years, began B. C. 284, from the union of three. The latter was at first composed of three cantons, but comprised eventually thirteen.

cil. In vain, was the voice of vengeance heard from every province of Spain, amid the wreck of a dissolving government. In vain did thousands of swords glitter in the uplifted hands of an incensed nation, to light them through the storms of war, to the regions of freedom and peace. But the armies of her enemy rushed in one mighty flood, from the summit of the Pyrenees ; and in a moment, the rights, the glory, and the happiness of Spain were swept into the shoreless ocean of tyranny. Then we beheld the proud genius of that devoted country, borne aloft in the fiery chariot of despotism, nor hath she left behind her even the mantle of Hope, to cover the nakedness of despair. But shall we not believe that the time will yet come, perhaps even now is come, when in the midnight of that nation's misery and humiliation, the shackles of the captive shall drop from his limbs, and the doors of his prison burst open spontaneously: when the earthquake of revolution shall humble the proud towers of despotism in the dust, and the great apostles of patriotism shall swell the loud anthem of praise and gratitude, for their country's deliverance.

But, if the fate of Spain speak not a language sufficiently impressive, turn to the republics of Greece, and listen to the faint murmur of admonition, that issues from the shattered tomb of their freedom and glory. If moral and political corruption were the efficient causes of their ruin, the daring hand of discord administered the fatal poison. When united against Persia, they presented as sublime a sight as the world has ever witnessed. Then we beheld a band of heroes rush from the calm vale of retirement, at their country's call, great in the conscious dignity of nature, and the pure energy of republican virtue. Then we beheld cities opposed to nations, and a people to the world.

At that period, Greece furnished the noblest materials for a happy and permanent union. In each state, virtue was the predominating principle of the constitution: public good the object of the individual, and national prosperity the sole reward of the ruler. The soldier then was but the citizen in disguise; his only jealousy was, for the preservation of

domestic harmony ; his only fear, lest he should outlive the liberties of his country ; his only wish, to hand down to posterity the blessings, which he had received from his fathers. If they had then become but one nation, under one general government, they might have resisted successfully even the gigantic power of Rome, and have vied with the bright records of glory and happiness, which fame shall transcribe from the annals of America. But, when the storm had passed away, whose fury had driven them to the same shelter, when the serene sky of peace and independence invited to the enjoyment of its genial influence, the spirit of discord frowned on the brightening prospect. With one consent, they levelled the encircling ramparts of union, and rushed, like the prodigal, to revel in the lawless excesses of licentiousness and ambition. They overturned the altar they had consecrated to the genius of their common country, and soon we beheld that genius, mourning amid the ruined monuments of his greatness, and shedding the tear of unavailing regret, on the hallowed plains of Marathon and Platæa.

But vain would be the testimony of speculation, and equally vain the combined experience of three thousand years, could we not trace their application to ourselves ; and discover in our domestic and foreign relations, arguments for our union, which the sophist cannot answer, and the sceptic dare not question. Let us now examine our internal situation, and we shall perceive that the nature of our government, our intimate connection with each other, and the rapid progress of public prosperity since the revolution, are links in a chain of reasoning, peculiar to ourselves.

In pursuing the train of thoughts, suggested by this part of our subject, we must be sensible, that the principle of union is more perfect in our system, than in any other. With us, each state retains such rights and powers, as are essential to its individual interest ; while the general government is invested with those, which concern the duties and happiness of all. Congress acts for all, with regard to foreign countries, as one united nation ; and for all, when considered in themselves, as consisting of parts necessarily different, yet

closely allied. With us, no single State can constitutionally affect the proceedings of the national legislature, or be exclusively the ally of other powers. If ever a political scheme resembled the Divine government, it is ours, where each exists for the whole, and the whole for each. As in the planetary world, so in our system, each has its own peculiar laws; and the harmonious movement of the whole is but a natural emanation from the cooperative influence of the parts.

To the principle of union, we may add the principle of renovation. Our government is the only just medium between despotism, where the rights of nature vanish in the slavery of the subject, and pure democracy, in which the subordination of the citizen is lost in the licentiousness of the man. Ours only is, in a word, the real government of the people, where legislative power is the delegated will of the whole, and civil authority the representative force of all: in which the duties of the individual are not neglected, as at Athens, for the privileges of the citizen; nor, as in the United Provinces, are the immunities of the latter forgotten in the interest of the former. Hence the administration cannot long be inconsistent with the views and wishes of the people. The policy, which is fatal to their welfare and at variance with their principles, is ruinous in itself, and soon gives way to measures, more popular and judicious. If the interests of the community suffer, they are the judges, and their good sense will soon compel their rulers to see and correct the impolicy of their measures. What though the power of an individual, disorder, for a moment, like the comet descending into our system, the harmony of the whole, the elastic spring of such a government would act with redoubled force, and expel him from the bosom of his country. What though the mighty torrent of faction swell beyond its limits, and threaten an universal deluge, yet shall it soon be lost in the vast ocean of public good, and public virtue.

The principle of improvement is intimately connected with that of renovation. Neither can exist, but in a representative government; and each attains the height of perfection

only in a republic like ours. Unshackled by national establishments, like the democracies of antiquity, our foreign and domestic regulations must always vary with the actual state of our country. Whilst agriculture, manufactures, and commerce, shall be the main pillars of American greatness, the spirit of improvement in them will govern the policy of our national legislature. Hence we have no reason to fear, that we shall ever justify the remark of an eminent political writer, "that the laws, which aggrandize, are not those which preserve a nation." There was a point, beyond which the institutions of Sparta and Rome could not operate; but to the principle of union, the principle of renovation, and the principle of improvement, no prophetic voice shall ever be heard to say, "Thus far shall ye go, and no farther." The former resembles the human body, which after a season spontaneously languishes and decays; whilst, like the immortal spirit, the latter, did not the decrees of Heaven forbid it, would flourish in never-fading energy and beauty.

These arguments, deduced from the nature of our government, are strongly corroborated by those, which arise from a survey of our mutual connections and dependence.

He, who casts his eye over our happy land, must perceive that we form a little political world in ourselves: that our country seems, as was said of Laconia, to be but the patrimony of a band of brothers: that we appear to be another favored race, sent out by Heaven, from the storms and miseries of Europe, to dwell in this land of promise.

The object of every government ought to be the happiness of man, though the measures adopted by each are essentially different. Fortunately for America, every State in the Union, acknowledges, that property is the only true foundation of society; that the rights of the citizen are the vital principles of the Constitution, and the interest of the individual the vital principle of the community, that the welfare of the whole, not the aggrandizement of a part, the felicity of the people and not the glory of the ruler, should ever be the aim of the administration. Whilst then we

thus agree in those leading features, in which the parts of a great nation, ought to resemble each other, let not immaterial differences excite the spirit of dissension. Were one state a monarchy, and another an aristocracy ;* were this like Carthage, but a company of merchants, and that, like Sparta, but a band of soldiers, there might be grounds for complaint.

Let not contrariety of character be urged as an argument. Shall we find uniformity in the same state, the same city, or even in the same family ? Why then desire it, in an extensive country ? In Switzerland, some cantons were catholic and others protestant, some republican and others aristocratical, some refined and elegant as Athens, others rude and unpolished as Sparta. Nor let diversity of interest be objected. Were this the same in the north and south, would it not imply a similarity of local situation and natural advantages ? Where also would be the carrying trade, where the mutual interchange of luxuries for necessaries, of raw materials for manufactures ? Disunion would then be less fatal, because each would be independent of the other. But experience teaches us that the clashing of the different, yet connected interests of separate powers, threatens both with destruction.

If the influence of individual States be complained of now, how must the danger increase, the narrower the sphere of its action ! And if the politics of some particular states are followed too servilely in others, whilst we are but one people, how soon should we behold the fatal effects flowing from the truth remarked by an eminent statesmau, "that men are often more attached to the country of their principles, than to the country of their birth." Wealth, talents and population must always command superiority, and it is no less absurd to imagine that particular states should not take the lead in the American republic, than to be surprised,

* "Aussi voyons nous dans l' Histoire Romaine, que lorsque les Veiens eurent choisi un Roi, toutes les petites republiques de Toscane les abandonnerent. Tout fut perdu en Grece, lorsque les Rois de Macedoine obtinrent une place, parmi les Amphictions."—*Mont. Esp. d. Loix. L.* 9. *C.* 2.

because Athens and Sparta stood foremost in Greece. So far from militating against a union, this furnishes one of the strongest arguments, arising from our internal situation.—Were these powerful states the leaders of separate confederacies, how much greater would their relative influence be, and how much more pernicious to their own united government, and to the neighboring republics. Athens and Sparta, when independent, were too powerful for the liberty and happiness of Greece ; and the operation of similar principles, if we divide, may carry down the grey hairs of the present generation, with sorrow to the grave.

There are limits to the powers of government, no less than to those of the human mind ; but the more extensive our general administration, within reasonable bounds, the more will its schemes of policy be liberal and enlightened. The less also will they be affected by local interest and local power ; by individual enmity, selfishness and ambition.—These are some of the causes, which, if less restricted, would prove our ruin ; but confined and blended, as they now are, cooperate for the welfare of the whole. Notwithstanding the conflicting politics and interests of different parts of the union, we find that the individuals of the nation are generally harmonious, and that local views and local antipathies are lost in the expansive rights of the American citizen. But, when disunited, even these advantages must vanish ; for we shall then have no common character, no common constitution, no common country.

As the policy and interest of each State are peculiar, and continually vary, they ought to be regulated, as to internal concerns, by itself. If, however, you narrow the system, of which it is a part, its private welfare must be more frequently sacrificed to the general good of the whole. Hence, also, those inconveniences, which are now diffused over the nation, would be more severely felt, when confined to a part. All now suffer or rejoice together ; but then, the degradation of this would be the aggrandizement of that ; and the decline of one would invigorate the spirit of enterprise in another.

Let us conclude this survey of our internal connections, by considering the influence of the social principle, in strengthening the bonds of our union. In examining the operation of this universal cause, we may trace it distinctly in its emanations from the parent to his family, from the individual to his neighbors, and thence to the wider circle of his friends and acquaintance. We may perceive it successively varying and enlarging, as it interweaves the several ranks of Society, unites the diversified classes of the town with the more uniform inhabitants of the country and combines the influence of individuals and families, of cities and provinces, in forming the complex, but harmonious system of society. When we apply these views to our own country, we shall perceive them strikingly exemplified. We may follow the principle of association from each state to its neighbours, and from them to the union at large. And as the prospect expands, we shall behold the ties of nature and friendship, the calls of duty and interest, the rights of man, and the privileges of the citizen, uniting to form the sacred and mysterious bond of our union.

From the constitution of our government, and our natural alliance with each other, the transition is easy to the rapid progress of our country, since we became a confederate republic. If we begin with our own State, we shall behold our political and civil institutions continually improving; religion and knowledge more widely diffused; civilization extending in the country, and refinement in the city; discordant parts successively assuming the uniformity of the whole, and confusion gradually subsiding into order. Travel through each of our sister States, and you may observe with pleasure and surprize the operation of similar principles. These will be seen, however, to vary with the nature of the country, the genius of the people, and the Spirit of the Constitution. Then conceive yourselves elevated to an eminence, whence the eye may embrace the wide circuit of our happy land. Think what it was, when first we became a nation; consider its present state, and mark the gradual advancement of prosperity and power. See the forest retiring, and the

village expanding into the populous town: see this in turn swelling into the magnificence and greatness of the city. See the groves descending from our mountains, and rising again in the stately ship, or the spacious edifice. See the white sails of commerce gliding through the woods on the river or canal; and in countless numbers, brightening on the azure surface of the ocean, like the stars on the bosom of heaven. Behold the genius of enterprize collecting his bands of adventurers, and leading them to the western wilds. Behold! the mountains open to afford them a passage; the dark wave of the desert rolls back at their approach; the gloomy spirit of solitude retires before them, and the grateful wanderer builds the verdant altar to agriculture and peace. Then behold! the forest bends beneath his strokes, the orchard smiles on the hill, the harvest waves in the valley, and the song of the reaper is heard in the silence of the wilderness.

The reasoning thus founded on the nature of our government, our mutual connections, and the rapid progress of our republic, are alone sufficient to convince us. But, when we reflect on our relations with the rest of the world, every argument acquires new energy, every principle new importance, and conviction flashes across the mind, with a brighter and a purer blaze.

Were the United States the only nation on earth, or could they live entirely within themselves, the question would assume a different aspect. But in the actual state of the world, the policy of our country and the wants of other nations render it impossible. In vain might we forge the fetters of domestic restriction, they would melt from around us in the fierce fires of interest. In vain might we build the ramparts of foreign prohibition, like the walls of Jericho, they would fall as of their own accord. America then, must be connected with other nations, and must be influenced by them. The policy, therefore, of our young and flourishing country, is to preserve our interests as distinct as possible, from those of other nations. This we shall be enabled to do more effectually, by union, than by public virtue at home

and public faith abroad, if once we divide. From experience we learn, that interests different in themselves are yet the same, when contrasted with those of others. Hence, though the local policy of one part of America, be at variance with that of another, they are one and the same, when considered in relation to the tendency of foreign influence. Now, from the operation of this cause, the interest of one part of the union, will never govern the national alliances and welfare of the whole; but when disunited, each must be the ally or the foe of the powerful nations of Europe. Were there but one great nation in the world beside ourselves, she would always be decidedly hostile or favorable to us. Whilst, therefore, our confederacy lasts, other governments may perplex, but cannot confound us; they may injure our interests, but not our liberties; they may exasperate us mutually as fellow-citizens, but never can arm us against each other as enemies. So long as we continue united, our alliance will be an important object to Europeans; and our interest will be eventually secured by its intimate connection with theirs. But when we cease to be one people, we must treat with them as a favor, perhaps for protection, even at the expense of our rights. Do we complain then of foreign influence now, and shall we separate and hope to escape the gigantic arm, which is stretched across the Atlantic to destroy us?

In every republican government there must be diversity of opinion. If all are ever united in time of peace, it betokens indeed sometimes universal enthusiasm, or universal virtue, but almost always universal corruption. The public calm, which exists in the absence of party, is the gloom of midnight, before the blazing vulcano lights up the darkened ocean; it is the awful pause of nature, before she is devastated by the tempest. Experience teaches us, that in extensive governments, the contentions of party are a war of words and influence, but in small states, they become the contest of the sword. In one, it is the citizen, who freely asserts his principles; in the other, it is the individual, who combats with the weapons of personal interest and personal enmity. As

soon then as disunion ensues, each state will be torn by its own parties, and foreign influence will inflame them against each other, and each against all the rest. Then would the waves of faction dash with fatal success against the rock of our freedom, and all the proud monuments of glory and liberty would perish in one boundless deluge of corruption and ruin. Then, no Ararat would swell above the flood, no dove would bear the olive-branch of peace, and the virtuous republican of future days would exclaim,

" ——————— Thy lofty domes, no more,
" Not e'en the ruins of thy pomp remain,
" Not e'en the dust they sunk in ———.'

Thus have we endeavored faithfully to survey the grounds, on which the friends of union rest their arguments for its continuance. We beheld the faint light of speculation blending with the bright and steady flame of experience. We beheld them, like the eastern star, resting on the temple of our freedom, on whose portals were inscribed the words of our departed Washington, " Your union must ever be considered, as a main prop of your liberty." But if the picture of our domestic and foreign relations, be correct, how shall we observe every color heightened, and every feature more strongly marked, the farther we extend our views ! Through every part, we shall trace the bright scenes of glory and peace awakening into life, under the animating touches of union ; and the prospect become wild and mournful under the wintry influence of discord. We shall read a page in the book of futurity, which the hand of union only can tear from the records of fate. Let us then direct our attention next to the fatal effects of disunion on ourselves, and the happy consequences, which reason and experience convince us must flow from union of interest, union of sentiment, and union of power.

The American, who can look forward with calmness to the day of separation, must be either more, or less than man.— He must be the victim of ambition or corruption; a deluded enthusiast, or a prophet of good, which the most sanguine dare not hope, and the keen-eyed statesman cannot foresee.

Thenceforward the American eagle shall drop the olive-branch of peace, and grasp only the arrows of war. The hand, which writes the declaration of disunion, shall feel the blood curdle in its veins ; and the tongue, which reads it to the world, shall stiffen in the act. The mountains that divide us, shall be "the dark mountains of death," and the streams that flow between, like the waters of Egypt, shall be turned into blood.

But terrific as is the picture, which anticipation presents, let us gaze upon it, resolutely and calmly. Conceive the eventful crisis arrived, when the delegates of America meet to sever our confederacy. Unlike the glorious Congress, which declared us independent, unlike the equally glorious Convention, which framed our Constitution, they would join to destroy the fairest edifice, that human hands have ever raised. Already is their object attained. With one voice they pronounce us free and independent of each other.*— They dash on the earth the Tables of our common alliance ; they march in triumph to kindle the flame, that is to consume the temple of union, and hear with a smile the loud crash, as it sinks in ruins. In vain, when the youthful genius of America is laid on the altar of separation, may a voice from Heaven exclaim, "Hold ! hold !" In vain, may the bleeding image of their country arise and point to her wounds ; each will exclaim, in the language of the murderer Macbeth, "Thou canst not say, I did it." In vain, may they call up the spirit of Washington to hallow their rites : like the prophet at Endor, he shall look but to blast, and speak but to curse.

I pass over the scenes immediately succeeding the sepa-

* Were we to divide, several different united governments would probably arise. As our present system is a confederacy of independent states or nations, so we might then conceive a union of those independent leagues. Congress, now the representative of single, but united states, would then be a Congress of Ambassadors from distinct, but confederated leagues. Now, Legislating for a union of free nations, it would then be the Lawgiver for a union of separate confederacies. This scheme, however, would be as visionary, as the national tribunal of Henry IV. or the independent republic of the protestant leaders in France.

ration. I shall not survey the anxiety of the public mind, the interruption of private concerns, or the stagnation of foreign and domestic intercourse. I shall not pourtray the violence of party, the intrigues of powerful states, the cabals of individuals, and the efforts of foreign nations. Let us suppose the boundaries of the States defined, their constitutions established, and treaties of alliance formed between them, and with other governments. These new republics thus arising from the ruins of one, would present the most flattering prospects. The gloomy countenance of despondence has already brightened into hope, and doubt is exchanged for the confidence inspired by certainty.

For a season the affairs of these commonwealths might be conducted with moderation and wisdom. Public virtue might be the rule of action at home, and public faith towards each other and the rest of the world. But this could not long be the state of independent and neighboring nations. While the parent lives, his authority and affection may preserve the harmony of his family circle ; but when he dies, the cessation of personal intercourse produces coldness, and difference of interest creates difference of sentiment, perhaps even enmity. The human nature of nations is like that of individuals ; for after any great change, the man and the people are equally circumspect and moderate. But selfishness unfortunately too soon succeeds to duty, and the principle of ambition to the principle of usefulness.

In a short time, we should see the confirmation of the reasoning already advanced. We should see the fatal progress of party spirit, of foreign influence, of local policy, of clashing interests, and of individual intrigue. We should look in vain for the principles of union, renovation, and improvement ; in vain for the liberal views and dignified firmness of a united government ; in vain for the respect and honorable alliance of foreign powers.

Let us not rest satisfied, however, with this cursory survey, but carefully examine the tendency of interest and ambition. Were we assured that these republics would always understand and pursue their real welfare, that they

would discard the influence of selfishness and local prejudice, that they would be ready to acknowledge and change impolitic measures, and to enter into the liberal and more enlightened schemes of their neighbors, we might promise ourselves, that they would be permanent and happy. In a few years, however, we should behold the operation of a principle already mentioned as important: that different yet connected interests, ought to be governed by the same hand. Were they independent, the same effects never could arise; but when associated, they induce each party to imagine, that they have superior claims on the other. From this source would spring misunderstanding, contention, perhaps even a temporary cessation of intercourse; and these unpropitious events would be favorable to the machinations of party, and the intrigues of other nations.

Let it not be said that a sense of interest would guide them. Few nations have ever had the discernment, and still fewer the virtue and resolution, to consult their real welfare. In vain, did Demosthenes urge a war against Philip; in vain did Burke dissuade from American taxation; and Chatham plead, with his own immortal eloquence, for conciliatory measures with the colonies. Those casual or trifling events, which often decide the fate of human affairs, would have a fatal influence.* Diversity of character would give additional weight to every cause, that would militate against reconciliation. The resentment or ambition of individuals, the interested views of particular classes or establishments, and a variety of unforeseen circumstances, would darken the prospect.

To the jealousy of interest, we may add, the jealousy of rights; for the pride of sovereignty is as baneful to nations, as the pride of intellect to individuals. The tendency of each is to induce disregard or contempt for the claims, the power, or the remonstrances of others. This spirit is the natural emanation of privileges long enjoyed, of indepen-

*"So paltry a sum as three pence, in the eyes of a financier; so insignificant an article as tea, in the eyes of a philosopher, have shaken the pillars of a commercial empire, that circled the whole globe."—*Burke.*

dence universally acknowledged, and of confidence in self-opinion. At a time when this temper would influence legislative deliberation, few individuals would feel and act up to the principle of an eminent statesman, "that timidity with regard to the well being of our country, is heroic virtue." Few national councils would be so discerning and upright, as to show by their actions, that the true glory of a people is ever inseparable from their real welfare. The consequence of such occurrences might be an appeal to arms. There was a time, when the western people were ready to march down on New Orleans; we have seen some of the States agitated by insurrection and rebellion; and but lately, the general government resisted by the legislature of Pennsylvania. Had the affair of the Chesapeake concerned two of these republics, or had the minister of one undertaken to act, as Genet did under Washington's administration, how dark must have been the page of history, that would have recorded the consequences! If one State were disaffected to the confederacy, of which it formed a part, what pencil can paint the scene of contention, intrigue, and anxiety that must ensue. These causes have been considered in themselves, but when we embrace within our view, the cooperating influence of other states and of foreign nations, may we not exclaim with the poet,

"On the tomb of hope interred,
"Scowls the spectre of despair."

Attendant on these calamities, would also be the growing power of individuals, and of military establishments. In times of danger, it is not on the wisdom and firmness of legislatures only, that reliance is placed; but also on the talents and authority of an individual. At that moment, when too often the rights of all are governed by a single arm, and the voice of one is the collected voice of a nation, who would trust the glory and liberty of his country, but with another Washington? The general then would no longer be the private citizen, called out by the free choice of his countrymen, but the celebrated warrior pointed out by the urgency

of the times. The soldier would cease to be the farmer or mechanic, on a temporary pilgrimage from home,

> "But strutting round, in gaudy blue and red,
> "Would eat in idleness the poor man's bread."

The soothing hand of time, which often closes our wounds and dries up our tears, could never hold out the golden sceptre of peace. The principles of ruin, like the breath of the pestilence, would scatter terror and infection around, and though like the rivers of lava, it sprang from one common source, would widen, at every moment, the circle of devastation.

Thus should we see the objects of these states not only unanswered, but supplanted by others. They had instituted the civic festival of peace, and beheld it changed for the triumph of war. They had crowned the eminent statesman with the olive of the citizen, and saw it converted into the laurels of the warrior. The old man, who had walked exultingly in procession, to taste the waters of freedom from the fountain of a separate government, beheld the placid stream that flowed from it suddenly sink from his sight, and burst forth a dark and turbulent torrent. The young man, whose hand should have delighted in the arts of peace, now grasps the glittering sword of battle, and smiles with delight at the blast of the trumpet. How soon the citizen would be lost in the soldier, and the patriot leader of his countrymen in the hero: how often the gleam of arms would startle the peaceful tenant of the cottage, and the trump awake the slumbers of infancy, time only could show. War, which in its mildest forms, is fraught with ruin and horror, when waged by neighboring states, thirsting for vengeance, animated by interest, or eager for glory, becomes the most cruel scourge in the hand of Heaven. Then, it is rapid as the whirlwind, overwhelming as the cataract, and merciless as the angel of death. Memory still paints the terrific scene to many, who witnessed our revolutionary struggle. Friends, who beheld the companions of your youth, hewn down by your side in the ranks of war, I appeal to you. Parents, who grasped, for the last time, the hand of your child, and sent him to fall in

the battles of his country, I appeal to you. Sons, who bathed with your tears the wounds of an aged father, and caught the last benediction of paternal love, I appeal to you. Widows, whose arms were thrown for the last time, in the agony of separation, round the necks of your husbands, I appeal to you. Spirits of the dead, whose last prayer was for an orphan family, whose dying eyes were raised to Heaven for a desolate widow, whose last words were a blessing on them and your country, I appeal to you.

Amid this scene of horrors, when age would excite no pity, infancy have no privilege, and beauty plead in vain, where would be the order of Cincinnatus? Then would be the favorable moment for the accomplishment of those ambitious schemes, unjustly attributed to you. But in vain against you, did the fire of eloquence flash from the lips of a Mirabeau. It was but the lambent flame, that played over your heads, and marked you the favorites of heaven. The world and your country now freely bestow their confidence and veneration, and let me promise for those, who have been called in the flower of youth, to share in your rights and honors, that they shall never be disgraced. To be Americans is our noblest privilege as men, to be members of your body, as citizens; and since the sacred duty of our lives shall be to deserve well of our country, we shall look for our models among you, on whose brows the laurel of the soldier is half concealed by the olive wreath of the citizen. To preserve and improve the blessings your valor has won, shall be the height of our virtuous ambition: and often in the calm shades of domestic life, shall we regret, that we did not share in your dangers, because you "fought to protect, and conquered but to bless." But, though we have not climbed with you the steep ascent of freedom, nor waved the banners of victory on the ramparts of glory, never shall we forget that we also have feelings peculiar to ourselves. Your bosoms have never heaved with gratitude, as you looked on the champions of our liberty, for you are among the number of our deliverers. You have never felt the glow of youthful enthusiasm, in reflecting on the departed sages of our coun-

try, for you and they were fellow laborers in the great work of our redemption. You have never heard a parent's voice awakening the tender mind to the love of America, and to the admiration of her statesmen and heroes. Your cradle was rocked by the genius of Britain, her banners were the swathing bands of your infancy, and hope already saw you armed with the thunder of battle, and the lightning of eloquence, in the cause of Britain. How then shall we ever forget, that you were born British subjects, but we American citizens! You have indeed secured these privileges to us, and millions yet unborn, we trust, shall inherit them. But to that unborn posterity we can say, with mournful exultation, "We have beheld the faces of our deliverers, and heard the voices of our revolutionary heroes. They were our friends, and often for us, has the tear of solicitude or of affection bedewed their manly cheeks. They were our fathers; and often have the bright visions of hope been indulged, while they pictured to themselves, in us, the future statesmen and heroes of our country. These arms have been fondly thrown, in the caresses of childhood, around their necks, and have supported them on the bed of death: these hands have borne them to their graves, and inscribed on their urns, the record of gratitude and glory."

If we have seen the jealousy of interest, and the jealousy of power, like resistless torrents, overflowing the fair fields of liberty and happiness, how shall their fatal effects be encreased, when we behold the troubled stream of party spirit rushing to swell the flood, and dashing its aspiring waves against the lofty rock of national prosperity. 'Tis like the evil spirit suggesting terrific dreams to the sleeping Eve; 'tis like the same spirit, in the garden of Paradise, persuading to rebellion against God. Experience has taught us that factions become more dangerous the narrower the sphere, within which they operate. Those divisions, therefore, which now alarm us, would then be seen to influence individual interest, and individual happiness; for each would feel a personal concern in the principles of his party. Con-

sider the connections of these parties with others in the different states, and reflect on the influence of foreign nations. Heighten the picture still farther, by embracing within your view the power and enmity of individuals, the secret schemes of interest, unlooked for events at home, and political changes abroad. With these circumstances before you, conceive an alteration in public opinion. But I draw a veil over the scene of insult, animosity, and resentment that must ensue; and proceed to consider the progress and influence of ambition.

Every republic has at times generated this principle, and has been compelled to confess, that if combined with talents, it is the secret mine, which when it is sprung, buries the strongest bulwarks of freedom in ruins. Urged onward by this incentive, and supported by the energies of a great mind, it is not difficult to deceive or corrupt the unsuspecting people; for unhappily, the propensity to prefer interest to duty, and appearance to reality, is inherent in national, no less than individual character.

But, whatever be the natural tendency of these causes, they are generally concentered by the skill and good fortune of some aspiring individual. And where could brighter prospects open to such a man, than in these republics? The principle of emulation is implanted at an early age, and as it expands, the chief delight of the youth is to excel, and his keenest pang, that which springs from the superiority of others. Governed by feeling, he soon dwells with enthusiasm on the page, that records the virtues, the hardships, and the victories of the hero. Already has he admired the brilliant actions of Alcibiades, Cæsar, and Cromwell, and half wished that he had lived in their days to dispute with them the laurels, which they obtained. He reads the noble sentiment of the orator, "Vita brevis, sed gloriæ cursus sempiternus;" and would dig his own grave, could he dare to hope that his achievements, like those of Sesostris, would be engraven on columns of brass, or immortalized in the romantic narrative of a Quintus Curtius. He soon begins to mingle in the world, to practice political hypocri-

cy, and to court the favor of the ignorant and unsuspicious. Behold him now on the stage of life. His party chosen, he pretends to idolize the people, and speaks of the imprescriptible rights of man. No arts are too mean, no professions too humiliating, no sacrifice of principle, of duty, of affection, too great to secure popularity. In a few years he enjoys the full confidence of the ruling party ; for his talents are too splended not to ensure distinction, and his political creed but too orthodox, not to stamp him the advocate of the rights and welfare of his country. Early in life, he had resolved to stand first in the legislature of the nation, or to be the leader of some powerful faction. Now, he aims at sovereignty. No seat will satisfy him but the throne of Freedom: no footstool but the neck of his country. By a train of intrigues and propitious events, the moment at last comes, when he shall wield the thunder of a despot, or perish like Catiline. And now the blow is struck. Like Brennus, he casts his sword into the scale, and his fellow-citizens become his slaves.

Thus have we examined the probable consequences of disunion, and seen the fatal tendency of the jealousy of interest, and the jealousy of rights, of party spirit, and of ambition. We saw the prospect darken at every step ; we walked through the valley of the shadow of death, " but there was no rod, no staff to comfort us." We looked and beheld the altar of peace shattered by the lightnings of faction, and her temple swept by the whirlwind into the chasm of separation. We saw the rock of freedom cleft to its base, and sinking mid the billows of disunion : and the indignant genius of Columbia ascending, never to return. Then we beheld the flaming temple of ambition arise, rocked on the stormy waves of faction and discord : we heard the demon of war rushing in the tempest to inhabit it, amid the shrieks of the orphan and the widow : we saw his shrine adorned with the gorgeous banner, the beamy helmet, and the glittering spear ; whilst on the altar were inscribed in letters of blood, " One Murder makes a Villain, Millions a Hero."

If these be the fatal effects of disunion, people of America, why would you divide ? Shall we forsake the peaceful shores of freedom, to seek the unknown land of separation and discord ? Shall the fragile bark of national happiness be hurried down the stream of time into the stormy ocean of political uncertainty, and not be sunk in the whirlpools of faction, or dashed against the rocks of ambition ? Shall the traveller dare the massy fragment, which thunders from the mountain's brow, and not be crushed ? And shall we leap down the frightful precipice, that overhangs the black gulf of national ruin, and hope to escape ?

I might call your attention now, to the happy consequences which may be expected to flow from the continuance of union, and contrast them with the gloomy scenes I have just described ; but I forbear to rend a veil, which the hand of time will remove. You have already drawn the lovely picture, brightening under the creative pencil of ancy, and softened by the mellow touches of feeling. And, moreover, anticipation could shed but a feeble gleam over a prospect, on which the unfolding glories of our future union, will beam with a splendor, hitherto unrivalled in the history of man.* But though we decline a survey so useful and gratifying, may we not dwell on our own advantages, and challenge the world to produce a nation so eminently favored ? To what page of history can the eye be turned, which will not enhance, on a comparison, our national pride and the true glory of our country ? Shall we fear an equal in the States of Greece, or in the Commonwealth of Rome ? In the Lycian Confederacy, or the Achæan League ? In the Cantons of

* The following picture of America from the pen of the great Burke, is too flattering and appropriate to be omitted. " Nothing, in the history of mankind, is like their progress. For my part, I never cast an eye on their flourishing commerce, and their cultivated and commodious life, but they seem to me rather ancient nations grown to perfection, through a long series of fortunate events, and a train of successful industry, accumulating wealth in many centuries, than the Colonies of yesterday, than a set of miserable outcasts a few years ago, not so much sent as thrown out on the bleak and barren shore of a desolate wilderness, three thousand miles from all civilized intercourse."

Switzerland, or the United Provinces? Theirs was but the twilight of freedom, a feeble transcript of what you possess. Where then, but in our native land, shall we find this original of all that is most honorable and useful to mankind? Where is the freedom of the citizen the basis, and his happiness the object of the constitution? And where are legislators the choice of the people, and the laws enacted solely to promote their welfare? It is in America. Where are the rights of man revered, the privileges of the citizen secured, and the claims of the stranger acknowledged and enforced? Where does the victim of foreign persecution find an eminence, on which the ark of his hopes may rest? It is in America. Where can we look for a government so consistent with the liberty, and so adequate to the wants of the people? So comprehensive, and yet so minute? So permanent in its principles, and yet so versatile in their application? Where shall we find a country so various in its productions, and so abundant in its resources: so admirably adapted for commerce with the whole world, and yet so capable of living within itself; daily becoming more powerful and happy at home, more respectable and necessary abroad? And where do we meet with a nation more liberal, generous, and enlightened? more calm and intrepid in war? more dignified and polished in peace? more moderate and grateful in prosperity? more resolute and patient in adversity? Where—a nation, whose leading characters have been more distinguished for the bold and energetic virtues of public life, and the mild and engaging qualities, which endear us in retirement? whose heroes, and whose statesmen have reflected brighter honor on their country, by the comprehensive depth of their understanding, the versatility of their genius, and the masterly powers of their eloquence?

Friends, and Fellow-Citizens—Were we assembled this day merely to commemorate the glorious æra, of which it is the anniversary, and to indulge our national enthusiasm, by dwelling on the great events of our Revolution, still would our feelings be proud and enviable indeed. But the

dark clouds of adversity have passed away, and the sunshine of peace streams in full splendor on our happy land. Henceforth, the toils of the soldier, and the struggles of our country, shall be contrasted with the blessings we enjoy: the patriot and hero of former times may sleep unnoticed, but not unbeloved: and even the sacred virtues of Washington may be rarely heard to enforce the reasoning, and heighten the eloquence of the orator. Henceforth let the page of history be the record of their usefulness and renown; whilst you consult the future interests of yourselves, of posterity, and of the world.

Under impressions, so awful and interesting, reflect, Americans, on these duties, and how you may best discharge them. Know then, that security or corruption in the people, and ambition in the rulers, are the bane of republican governments. Know that from each of you flows the tributary stream of power and influence, and that public authority and public opinion must be the same, as the fountain from which they spring. Know that the perfection and happiness of a nation depend on the virtues of its citizens, and that each contributes to the purity or corruption, the misery or felicity of his country. Can you trace the effect of every lineament and color, in giving beauty and grace to the landscape? Can you mark the swelling of every wave on the ruffled surface of the ocean; and the splendor of every star, whose mingled light forms the grandeur and magnificence of Heaven? And shall the citizen be free from the reproaches of his country and of future generations, merely because he is not the tyrant, the traitor, or the rebel? Shall he hope to escape the avenging arm of conscience, if his example or his principles have roused the indignation of the virtuous and wise? Guard then, against that fatal security, which originates in private indifference, and that universal corruption, which is but the combined influence of individuals. Guard against that party spirit, which makes the freeman a slave, and the citizen a hireling; which arms your country against herself, and becomes too often the means of aggrandizement to the turbulent and ambitious. Guard against that spirit of

innovation, which looks upon antiquity as the stamp of infamy, and novelty as the test of usefulness and truth : which holds nothing sacred, no, not even the records of eternal goodness, not the memory of Washington, not the Constitution of our country. Guard against ingratitude to the illustrious characters of our nation ; for coldness and neglect to them, will cloud the bright dawn of youthful talents and patriotism. Your hands must weave the wreath of their renown, your hands must build the triumphal arch of their glory, and open to them the gates of immortality. Above all, admire and revere the great father of our country, whose heart was the sanctuary of virtue, and his mind the temple of wisdom. Love and venerate him, as the first of men; and know, Americans, that the world envy us that man, more than our freedom and happiness; for all have heard the name of Washington; but who, except Americans, can conceive the blessings, which Americans enjoy!

Let not the clamors of faction deafen you to the voice of your country, nor the duties of the citizen yield to the interest of the individual. Let not the dissensions of party cherish the spirit of ambition, by substituting the principles of one for the principles of all: nor lead to political idolatry, and thence to despotism, by converting the representative of the people's power, into the master of the people's rights. Imitate, therefore, your ancestors, who taught by their example, that death is the only equivalent for freedom, and that virtue and moderation, can alone ensure union in war, and prosperity in peace. But, if you neglect the salutary counsels of wisdom and experience, already may you tremble at the ruin, that awaits you. Think not that you can never become a corrupt people, the mercenaries of a demagogue, or the slaves of a tyrant. Rome was once powerful, happy, and free. Had the Roman then been told, that the charter of her freedom, and the crown of her glory, should be trampled in the dust, by the unhallowed foot of ambition, how would his eye have flashed with indignation, and the sword of vengeance have glistened in the descending hand of the incensed patriot! Whilst, how-

ever, you consult your own interests, think of the glory and usefulness of your forefathers ; think of the ties, which bind you to your descendants, and of the misery and degradation of the mass of mankind. Think of what you owe to them, and know that your duties are extensive as the world, commensurate with the privileges of human nature, and sanctified by the warnings and instructions of the Christian Scriptures. They have claims, which you cannot, you dare not disregard. They entreat you in the pathetic eloquence of persuasion : they urge you in the forcible language of remonstrance : they adjure you in the accents of despair, by the vengeance of Heaven, and the curses of posterity, not to betray so sacred a charge. To you are entrusted not merely the liberty and glory of America, but the rights of man, and the welfare of future ages. You alone enjoy genuine happiness, and genuine freedom ; and you are the chosen race, whose example shall yet arouse the sleeping genius of nations, to unsheath the sword of reformation, and grasp the giant sceptre of independence. Think not, then, that we are to be the only great and independent nation in America. Rather behold with the keen eye of anticipation, new revolutions taking place, other nations springing to light, and knowledge and freedom universally diffused. Behold the submissive spirit of the Colony, then exchanged for the bold and enterprising character of an independent people. Behold the white sails of commerce swelling in every breeze, and reflected from every wave; the gilded spire, the marble portico, and the splendid edifice, rising in the desert, and brightening amid the gloom of surrounding woods. Behold the vast surface of South America, now one boundless expanse of hills and forests, then diversified with flourishing cities and cultivated plains. Behold the spirit of improvement gradually advancing from the shores of the ocean, levelling the woods, clearing the vallies, and scattering the golden harvest, and the purple fruits of autumn, over the sides and summits of the mountains. Hear the confused noise of the busy multitude, gathering on the shore, and rolling along the Amazon and La Plata, its deepening echoes

even to the cliffs and vallies of the Andes. Hear the voice of religion hymning the praise of God in the wilderness, and the cottager joining in the general anthem of praise and gratitude. Hear the midnight song of the mariner, resounding on every wave; and the rustic strains of the shepherd, floating in the breeze, on a thousand hills. Hear poetry describe the greatness and benevolence of God, in the sublimity and beauty of this New World: and eloquence plead for the rights of man, the glory of nations, and the happiness of universal nature.

Under obligations so sacred, with prospects so bright, can you, Americans, be deaf to the voice of posterity, and of mankind? Can you, as individuals, but be virtuous, when all must suffer for the vices and follies of one? Can you, as fellow citizens, be otherwise than united, whilst you behold the gigantic genius of faction, grasping the pillars of free-erm, and preparing to shake the temple of national happiness into ruins! Can you, as the only free and independent nation on earth, be regardless of the admonitions of experience, the voice of Heaven, the rights of your descendants, and the claims of future ages?—Great, happy, and free, what wish would you form? what prayer could you utter? What wish? but that the world may yet taste the blessings, which Americans enjoy: What prayer? but that ours may be the last republic on earth, or the centre of UNIVERSAL KNOWLEDGE, UNIVERSAL HAPPINESS, AND UNIVERSAL FREEDOM.

SPEECH

OF

THOMAS SMITH GRIMKÉ,

ONE OF THE SENATORS

FROM ST. PHILIP'S AND ST. MICHAEL'S,

DELIVERED

IN THE SENATE OF SOUTH CAROLINA,

In December, 1828,

DURING THE DEBATE

ON SUNDRY RESOLUTIONS,

Of the Senate and House of Representatives,

Respecting the Tariff.

"I beg pardon of this house for having taken up more time, than came to my share; and I thank them for the patience and polite attention, with which I have been heard. If I shall be in a minority, I shall have those painful sensations, which arise from a conviction of being overpowered in a good cause."—*Patrick Henry.*

Charleston.
PRINTED BY W. RILEY, 110 CHURCH-STREET.

1829.

TO THE

PEOPLE OF SOUTH CAROLINA.

Fellow Citizens,

I TRUST that I may, without offence and without suspicion of disrespect, dedicate to you the following pages.—They contain substantially the sentiments, delivered at the last session of the Legislature, on the questions, arising out of the passage of the Tariff bill of 1828. It is the privilege of the minority, if that minority consist of but one member, to be heard in your halls of Legislation; provided he speaks with the seriousness and propriety, which become the place, the audience and the subject. It is equally the privilege of the minority among the people, though but the thousandth part of them, to be heard through the press.—And suffer me to remark, that the People of this Country can never value too highly, on all great questions, the opposition of a minority, as long as it is constitutional in its forms and character, dignified, temperate and respectful in its manner, pure and patriotic in its objects. Such a minority is an inestimable blessing in a free, enlightened, representative government, as affording to the majority an irreproachable example of wisdom and moderation, of independence and firmness, of public spirit and public virtue.

I cannot be too grateful for the kindness and attention, with which I was favored by the Senate, during a long, complex and laborious examination of the great subject of Constitutional Law and National Policy, which was then before them. I present to you, substantially (though with many additions and alterations) what was then delivered: and, if it were the last act of my life, I should feel, whatever may be its reception, that I had not done my duty to my country, if I had not laid before you these sentiments. I know that they have been dictated by the love of peace and order,

of sober-minded, regulated liberty, of free, rational, temperate discussion. I do conscientiously believe them to be perfectly consistent with the mutual rights and interests of the States and of the Union : with the true dignity and authority of local as well as general Sovereignty. If I err, I have the satisfaction of knowing, that I do so honestly, after a faithful and diligeut examination of the subject. If I err, I have also the satisfaction of knowing, that although I differ from *some* of the wise and good of this day, yet that the *majority* of them advocate the same opinions. If I err, I have the farther satisfaction of knowing, that the wise and the good, of a nobler, and better, and wiser age, the age of 1789, sanctioned by their opinions and acts, the sentiments which I have attempted to vindicate. I appeal then from Carolina as she *is*, excited, suspicious, full of fears and gloomy thoughts, to Carolina as she *was*, from 1789 to the end of Mr. Monroe's administration, free from passion, prejudice, and apprehension. I appeal from Carolina, in 1828, a judge in *her own* case, to Carolina from 1789 to 1824, a judge in the case of her *sister* States. I appeal from Carolina, denying, and almost ready to resist the authority of the general government, to Carolina, *such as she was*, when she took no part in the sentiments and conduct of Virginia in 1798, as to the Alien and Sedition Laws : when she withheld her approbation from Pennsylvania, enacting a law, commanding and empowering the Governor to resist the execution of a Judgment rendered by a Court of the Union ; when she rejected the opinion, maintained by many in New England, that the Embargo of 1808, was unconstitutional : when she frowned on the doctrine of Connecticut and Massachusetts, in 1812, that the State Executive, not the President, was to judge, whether the Constitution authorised a call on the Militia in time of war: when, in 1821, (Acts p. 69,) she rejected the amendment proposed by Pennsylvania, to prohibit Congress from establishing the Bank of the United States, or its offices, out of the District of Columbia : and when in 1824, (Acts p. 83) she pronounced, by the unanimous vote of her Legislature, that the Administration of James Mon-

roe, so conspicuous for *internal improvements and the protective system*, had been *truly republican*, *wise*, *virtuous and successful*. I appeal from Carolina, agitated and alarmed, suffering and dissatisfied, acting almost alone, to the same Carolina, when she disapproved, in common with the vast majority of the People and States of the Union, the remonstrances and menaces of discontented minorities.

I feel that my own opinions are worth nothing, beyond the principles and reasonings, with which I have endeavored to sustain them. I trust then I shall be pardoned for enforcing them, by those of George Washington and Patrick Henry, the former, equally admirable in patriotism and judgment, the latter, originally the Great Antagonist of the Constitution. Washington, in his Farewell Address, thus speaks,

"The unity of government which constitutes you one people, is also now dear to you. It is justly so; for it is a main pillar in the edifice of your real independence; the support of your tranquility at home: your peace abroad; of your safety; of your prosperity; of that very liberty, which you so highly prize. But, as it is easy to foresee that, from different causes and from different quarters, much pains will be taken, many artifices employed, to weaken in your minds the conviction of this truth; as this is the point in your political fortress, against which the batteries of internal and external enemies will be most constantly and actively (though often covertly and insidiously) directed; it is of infinite moment, that you should properly estimate the immense value of your national union to your collective and individual happiness; that you should cherish a cordial, habitual, and immoveable attachment to it; accustoming yourselves to think and speak of it as of the Palladium of your political safety and prosperity; watching for its preservation with jealous anxiety; *discountenancing whatever may suggest even a suspicion that it can, in any event, be abandoned; and indignantly frowning upon the first dawning of every attempt to alienate any portion of our country from the rest, or to enfeeble the sacred ties, which now link together the various parts.*"

"This government, the offspring of your choice uninfluenced and unawed, adopted upon full investigation and mature deliberation, completely free in its principles, in the distribution of its powers uniting security with energy, and containing within itself a provision for its own amendment, has a just claim to your confidence and your support. Res-

pect for its authority, compliance with its laws, acquiescence in its measures, are duties enjoined by the fundamental maxims of true liberty. The basis of our political systems is the right of the people to make and to alter their constitutions of government. But the constitution which at any time exists, until changed by an explicit and authentic act of the whole people, is sacredly obligatory upon all. The very idea of the power, and the right of the people to establish government, pre-supposes the duty of every individual to obey the established government."

Patrick Henry, in his last speech against the Constitution, had said, in 1798, (Wirt's Life, p. 297,) "If I shall be in the minority, I shall have those painful sensations, which arise from the conviction of being overpowered in a good cause. Yet I will be a peaceable citizen. My head, my hand, and my heart shall be free to retrieve the loss of liberty, and remove the defects of that system, in a *constitutional way*. I wish not to go to violence; but will wait with hopes, that the spirit, which predominated in the Revolution, is not yet gone, nor the cause of those who are attached to the Revolution yet lost. I shall, therefore, patiently wait, in expectation of seeing that government changed, so as to be compatible with the safety, liberty and happiness of the People."

What Patrick Henry meant by this "Constitutional way," is explained in his Speech to the People, at the election in 1798; for, although he was then nearly sixty-three, he offered himself as a candidate for the House of Delegates; because he believed the sentiments and conduct of his own Virginia, in relation to the Alien and Sedition Laws, to be unconstitutional, and dangerous. He said to the People,

"That the late proceedings of the Virginia Assembly had filled him with apprehensions and alarm; that they had planted thorns upon his pillow; that they had drawn him from that happy retirement, which it had pleased a bountiful Providence to bestow, and in which he had hoped to pass, in quiet, the remainder of his days; that the State had quitted the sphere, in which she had been placed by the constitution; and in daring to pronounce upon the validity of federal laws, had gone out of her jurisdiction in a manner not warranted by any authority, and in the highest degree alarming to every considerate man; that such opposition,

on the part of Virginia, to the acts of the general government, *must* beget their enforcement by military power; that this would probably produce civil war; civil war, foreign alliances; and that foreign alliances must necessarily end in subjugation to the powers called in."—"Mr. Henry, proceeding in his address to the people, asked, "whether the county of Charlotte would have any authority to dispute an obedience to the laws of Virginia; and he pronounced Virginia to be to the union, what the county of Charlotte was to *her*. Having denied the right of a state to decide upon the constitutionality of federal laws, he added, that perhaps it might be necessary to say something of the merits of the laws in question. His private opinion was, that they were "*good* and *proper*." But, whatever, might be their merits, it belonged to the *people*, who held the reins over the head of congress, *and to them alone*, to say whether they were acceptable or otherwise, to Virginians; *and that this must be done by way of petition*. That congress were as much our representatives as the assembly, and had as good a right to our confidence. He had seen, with regret, the unlimited power over the purse and sword consigned to the general government; but that he had been overruled, and it was now necessary to submit to the constitutional exercise of that power. "If," said he, "I am asked what is to be done, when a people feel themselves intolerably oppressed, my answer is ready:—*Overturn the government*. But do not, I beseech you, carry matters to this length, without provocation. Wait at least until *some* infringement is made upon your rights, and which cannot otherwise be redressed; for if ever you recur to another change, you may bid adieu for ever to representative government. You can never exchange the present government, but for a monarchy."—*Wirt's Life of Henry, pp.* 393–4–5.

I hope, I do not err in the opinion, that justice to myself and to the subject, renders it proper, that I should publish along with the Remarks at the last Session, my Protest against the Preamble and Resolutions introduced by Dr. Ramsay, at the Session of 1827; and the Resolutions offered by me on the 12th of December last. I need hardly say, that if the opinions expressed in these, are errors, it is my misfortune to hold them still, with a more resolute conviction, that they are sober and valuable truths. If they are errors, I know, that as I have adopted them honestly, so I

adhere to them steadily, and expose them freely and candidly. If they are errors, suffer me to enjoy the consolation of believing, that they may serve as beacons to warn you against such heresies. But, if they are truths, I shall have the satisfaction of thinking, that I shall not have served my country in vain, if my public life should have brought forth no other fruit than these pages. Pardon my simplicity, perhaps I might say my presumption, in believing that I can render any service, in this most interesting and important matter. But it is the cause of our country; and therefore a holy and awful cause. But however unworthy, I hope that I have at least afforded an example of calm, respectful, temperate discussion, untainted by sarcasm and ridicule, undefiled by prejudice, jealousy and suspicion, unpolluted by threats and denunciations, by passion and bitterness.

Your Fellow Citizen,

And Servant,

THOMAS S. GRIMKÉ.

Charleston, 2d Nov. 1829

SOUTH CAROLINA.

IN THE SENATE.

Monday, December 17th, 1827.

Mr. GRIMKE, handed in the following Protest, which was ordered to be entered at length on the Journal.

" Protest of Thomas S. Grimke, one of the Senators from St. Philip's and St. Michael's.

Against the Report and Resolutions of the Special Committee, whereof Dr. Ramsay was Chairman, appointed 27th Nov. 1827, which Report and Resolutions were referred to the Committee of the Whole, and were discussed on Monday, Tuesday and Wednesday, the 10th, 11th and 12th of December, and having been reported, were adopted with an amendment to the second offered by Mr. Henry Deas, on the day last mentioned.

With regard to the report itself, I protest against it, considered as a preamble to the Resolutions, for the reasons for which I protest against the Resolutions themselves.

The first Resolution reads thus :

Resolved, That the Constitution of the United States is a compact between the people of the different States with each other, as separate and independent sovereignties ; and that for any violation of the letter or spirit of that compact by the Congress of the United States, it is not only the right of the people, but of the Legislature, who represent them, to every extent not limited, to remonstrate against violations of the fundamental compact.

I protest against the foregoing resolution, for the following reasons.

1st. I consider it immaterial, what circumstances gave rise to the present Constitution, in what mode it was called into being, or in what manner officers under that constitution are appointed, if the *powers* and the *duties* of the government, when constituted are *national* and not *federative* ; if the laws enacted by it act upon the people of the Union, *as one people*, and not upon the States, as separate and independent sovereignties, combined in a league of friendship (art. confed. art. 3d.) The present constitution at its commencement, " We the People, &c." compared with the articles of confederation, and with the declaration of independence, asserts itself to be the act of *the People* of the Union, and not of the

people of each of the *thirteen* United States. I cannot, therefore, regard the Constitution as a compact, subsisting and operating between the people of the *different* States, with *each* other, as separate and independent sovereignties, but as a compact subsisting between and operating upon *the* people of *one* Nation.

2dly. I protest also against the latter part of the resolution; because whilst I admit that it is the right of the people to remonstrate, I admit it is *their* right, *only* as the people of the *Union*. I cannot admit that the people of a State, *as such*, have the right of remonstrance; because I deny that a State, or the people of a State, as such, stand in such a relation to the Union, as to possess the right of remonstrance against the acts of a government, independent of such state and such people, neither governing them, nor responsible to them. As then, the people of the State, as *such*, have not this right, it follows conclusively that their Legislature cannot possess a power, which their constituents have not. Besides remonstrance is an appropriate act of *political*, not of *legislative* sovereignty: and as the General Assembly have only a legislative capacity under the Constitution of South-Carolina, they cannot do a political act, founded on a supposed political relation between them and Congress, when none such exists.

The second Resolution is as follows:

Resolved, That the Acts of Congress passed in 1816, 1820, and 1824, known by the name of the Tariff Laws, so far as they were intended to encourage manufactures, under the power to lay imposts, are violations of the Constitution in its spirit, and ought to be repealed.

I protest against the foregoing resolution for the following reasons.

1st. Congress has power to regulate Commerce. Manufactures in the United States have been the natural growth of a prosperous commerce. They are inseparably allied. It is impossible to regulate commerce without having a knowledge of, and a view to manufactures, at home. Duties must depress or encourage manufactures, according as they are laid with a view to, or under a disregard of manufactures. Congress, therefore, having the power, is bound to regulate trade, so as to promote them; if it should appear to the national legislature, to be for the general welfare; and of this, as a question of expediency, *they are the only judges*.

2dly. Because the practice of the government has been conformable to this construction of the Constitution, as appears especially by the act of 20th July, 1789, (1st vol. edit.

1815, L. U. S. page 2,) the preamble to which states these objects of the duty thereby laid, 1st. to support government. 2dly, to pay debts, and 3dly, "*for the encouragement and protection of manufactures :*" also by all the acts, which lay discriminating duties in favor of vessels, *built in the United States,* and which can have no other effect, than to encourage all the manufactures, upon which ship building depends ; also by the various acts, which lay discriminating duties in favor of spirits *distilled at home*, even from *foreign* materials: also by the acts of 1816, and 1820, almost unanimously approved throughout the Union.

3dly. Because I cannot reconcile, consistently with the dignity, honor, candor, and good sense of South Carolina, the above resolution, with the vote of thanks to President Monroe, passed in Dec. 1824, (p. 83,) whereby the Legislature, by a joint resolution, declared, that his administration had been *truly republican*, *wise*, *virtuous and successful* : whereas, if the above resolution be correct in principle, his administration was *the very reverse* of truly republican, wise, virtuous and successful.

The third Resolution reads as follows :

Resolved, That Congress have no power to construct roads and canals, in the States, with or without the assent of the States in whose limits those improvements are made : the authority of Congress extending no farther than to pass the necessary and proper laws to carry into execution their enumerated powers.

I protest against the foregoing resolution for the following reasons :

1st. As to roads. If the word "establish" signifies simply to *designate*, then the three last words "and post roads," mean nothing; because the power to designate post *offices* contains in itself the power to designate post *roads*, for after fixing the offices, the determining of the route would be a mere matter of arrangement with the mail contractor.— But the word *establish* cannot signify merely to designate. This expression implies the *pre-existence* of the thing designated. Whereas, the clause does not refer to offices and roads already existing.

Besides, the meaning of the word, in other parts of the Constitution, is, "to make, to create ;" and not simply to point out or select, (Art. 1, § 8 cl. 4,) "to establish a uniform rule of naturalization, and uniform laws on the subject of bankruptcies." (Art. 3, § 1.) "The judicial power shall be vested in one supreme court, and in such inferior courts, as congress may, from time to time, ordain and establish ;" "to establish justice," in the preamble means

strictly neither to create nor to designate, but to establish justice, by *creating* national instead of state tribunals for its administration.

2dly. As to roads and canals. It appears to me, that there is a clear and marked distinction, between the *specific* grant of a *separate*, *substantive* power : and the *necessary* grant of a *portion* of the same power, as *incidental* to another separate, substantive power, specifically granted. Thus the power to create corporations would have enabled congress to charter banks *all over the union*, *without* regard to the *financial* department of the government ; but the powers to borrow money, and to lay and collect taxes and duties, only confer authority to incorporate a bank for the *express* purpose of " conducing to the successful conducting of the national finances," and " of facilitating the obtaining of loans for the use of the government in sudden emergencies." A specific power to construct roads and canals, granted substantively and separately, would have authorised their establishment *all over* the union, *without* regard to any one of the enumerated powers. But as the clause now stands, no road or canal can be constructed, except as *incidental* to some one specific power, and *with a view* to the end or object of that power. If the general power to construct roads and canals had been given *separately*, the construction of them would have been in the nature of an *end :* but given as it now is *incidentally* such construction is in the nature of *means*.

The fourth Resolution reads thus :

Resolved, That the American Colonization Society is not an object of national interest, and that congress has no power in any way to patronize or direct appropriations for the benefit of this or any other society.

I protest against the preceding resolution because, although I freely concede that the American Colonization Society is not an object of national concern, yet I cannot admit the universal principle asserted by the resolution, that *no other* society can be an object of national interest. If the resolution had been limited to the A. C. S. I should have voted for it, but I cannot adopt it, as it now stands ; because I am satisfied that many societies may exist, whose objects would be so intimately connected with some of the specific, enumerated powers, that congress would have a clear right and would be under a strong obligation to encourage them.

The fifth Resolution reads thus :

Resolved, That our senators in congress be instructed, and our representatives requested to continue to oppose every increase of the tariff, with a view to protect domestic manufactures and all appropriations to the purpose of inter-

nal improvements of the United States, and all appropriations in favor of the Colonization Society, or the patronage of the same, either directly or indirectly by the general government.

I protest against the whole of the above resolution (except the clause as to the Colonization Society) for the reasons already given. I also object to the words "be instructed" as asserting the right to instruct the senators from S. C. in the congress of the U. S. as distinguished from the representatives. I cannot admit this principle, in regard to the senators. The Legislature of the State of South-Carolina, under the Constitution of the United States, has merely the *naked power of appointment*. Now I take it to be a fundamental rule of all law, whether civil or political, that the appointing power cannot *qualify* its act, either *at the time* of execution, or at any subsequent period, unless such a right be conferred by the original instrument, creating the power of appointment. And this principle is applicable with tenfold force, to the case of a delegated power of appointment; as in the case of the *legislature*, when executing the delegated authority to choose a senator.

It is unnecessary to say any thing on the subject of the sixth resolution, requiring the Governor to forward copies to our senators, &c. because I acquiesce in it as a correct measure, the majority having adopted the resolutions.

For the reasons above stated, I protest against the five resolutions above copied.

(Signed) THOS. S. GRIMKÉ.

RESOLUTIONS

Submitted to the Senate by Thomas S. Grimke, one of the Members from St. Philip's and St. Michael's, 12th December, 1828.

Resolved, That South-Carolina regards the Union of these States, as indispensible to their Liberty and Independence, their Peace, Prosperity, and Improvement.

Resolved, That South-Carolina, pledges to her sister States and to the Union, her Life, her Fortune, and her sacred Honour, for the maintenance of the Constitutional compact which binds them together.

Resolved, That South-Carolina acknowledges the importance and necessity of adhering to cotemporaneous expositions of the Constitution, especially when they have been repeatedly acted upon since by the different departments of the National Government, and have been acquiesced in by the great majority of the State Governments and of the People.

Resolved, That, according to the true theory and sound, practical interpretation of the Constitution of this State, all *ordinary* cases of neglect of duty, of abuse of power and of *usurpation of power*, by any of the departments of Government or by any public officer, are amply provided for by the remedies of impeachment, indictment, and elective franchise, and the Courts of Justice.

Resolved, That the people of this State and the Convention, which formed the Constitution of South-Carolina, regarded the exercise by the *Legislature of power not granted*, as a case of *ordinary* breach of duty, and provided against it through the elective franchise, and especially through the judicial department.

Resolved, That, according to the sound construction of the Constitution of this State, illustrated, sustained and enforced by a cotemporaneous exposition; by repeated judgments of our Courts, declaring Acts of Assembly to be void; by the course of our Legislature in pursuance of said judgments; and by the acquiescence of the people of this State for nearly forty years, the judiciary is the proper, peculiar, and only tribunal for deciding, in the last resort, as to merely local and domestic questions, on the Constitutionality of laws.

Resolved, That this Constitutional jurisdiction, thus established and approved, cannot be lawfully withdrawn from the Courts, but by an amendment of the Constitution, and that it doth not become the dignity, good sense, and discretion of the Legislature, to impeach or call in question the sufficiency of this tribunal, in point of wisdom and virtue, patriotism and independence, talents and learning.

Resolved, That according to the true theory and sound practical interpretation of the Constitution of these United States, all *ordinary* cases of neglect of duty, of abuse of power, and of *usurpation of power* by any of the departments of the National Government, or by any of its officers, are amply provided for by the remedies of impeachment, the Supreme Court, and the Elective Franchise.

Resolved, That the Convention, which formed the Constitution of the Union, the Legislatures of the States, the Conventions of the different States, and the people throughout the Union, regarded the exercise by the *State and National*

Legislatures of power not granted, as a case of *ordinary* breach of duty, and provided against it, through the Presidential veto, the Elective Franchise, and the Supreme Court of the United States.

Resolved, That, according to the letter and spirit, and to the sound construction, both practical and theoretical, of the National Compact, illustrated, sustained and enforced by cotemporaneous exposition; by repeated judgments of the Supreme Court, declaring Acts both of the State and National Legislature to be void; by the course of our Legislative proceedings, both in Congress and in the State Assemblies, in pursuance of said judgments; and by the acquiescence of the great majority of the State Tribunals, of the State Governments, and of the people throughout the Union; the Supreme Court is the proper, and peculiar, and only tribunal, having authority to decide in the last resort, upon the Constitutionality of the Acts of the General or State Governments.

Resolved, That this Constitutional Jurisdiction thus established and approved, cannot be lawfully withdrawn from that Court, but by an amendment of the National Compact; and that it doth not become the dignity, good sense and discretion of the Legislature, to impeach or call in question the sufficiency of this tribunal, in point of wisdom and virtue, patriotism and independence, talents and learning.

Resolved, That if the Tariff Act of 1828, be unconstitutional, the Supreme Court of these United States, is the only tribunal known to their Constitution, having jurisdiction to decide on the validity of that law; inasmuch as a refusal to comply with that law would constitute a case, arising under a law of Congress, and under the 2d Section of the 3d Article of the Constitution of the Union.

Resolved, That it is the duty of the State of South-Carolina, and that it well becomes her dignity, wisdom and moderation, her love of peace, order and good feeling, to desire, and if it be necessary, to seek in the spirit of his Excellency's Message of the 25th of November last, the judgment of the proper Courts of Justice, on the question, whether the Tariff Act of 1828, be Constitutional or not.

Resolved, That a *palpable* breach of the Constitution consists in the plain, simple affirmation of that, which is denied, or in the like negation of that, which is affirmed in the Constitution; and cannot be submitted to any honest man of good sense, without his determining at once the question.

Resolved, That every other case of alleged violation of the National Compact, opens a fair field for honest difference of opinion: that every such case is emphatically a

proper subject for the jurisdiction of the Supreme Court : and that whatever may be the opinion of the people or Legislature of a State, they are bound in duty, if they allege a violation, to desire the judgment of that tribunal : and to acquiesce therein, respectfully and peaceably, as the final decision of a supreme, independent arbiter, constituted such by themselves.

Resolved, That the Tariff Act of 1828 is not a *palpable* breach of the Constitution of the United States, not only because it neither affirms what is denied, nor denies what is affirmed in the Constitution ; but because the constitutionality of the protecting system was not called in question in Congress, in the State Legislatures, or by the people, till the year 1824, after an open, continued, and extensive practice of thirty-five years.

Resolved, That the Act of Congress of 4th July, 1789, (the second passed by the National Government,) must be regarded as a cotemporaneous exposition of the constitutional right of the General Government, to protect domestic manufactures ; because the subject was distinctly brought to the view of Congress by the amendment of Mr. Fitzsimons, accepted by Mr. Madison, by the petitions of the manufacturers, by the nature of the argument on the duty and tonnage bills, by the character of the provisions, and emphatically by the preamble of the former, which expressly declares one object to be, " the *encouragement* and *protection* of *domestic* manufactures."

Resolved, That such cotemporaneous exposition is entitled to the highest confidence, as the wise, salutary and sound construction ; because unwarrantable extensions by the new Government, of their granted powers, and usurpations of others not granted, had been boldly and repeatedly predicted ; because the first movements of that Government were watched with extreme jealousy by those who had objected to the Constitution ; because the first Congress consisted of men of both parties, of talents, integrity and experience, and contained sixteen of the Delegates, who had formed the Constitution ; because George Washington, the President of the Convention, was the President who signed the Bill ; and lastly, because the repeated, unquestioned practice of the Government, from 1789 to 1824, can be regarded in no other light, than as so many republications of that original, cotemporaneous exposition.

Resolved, As the State of South-Carolina has declared, that she believes the Tariff Act of 1828, to be unconstitutional, as a " misconstruction or abuse of power," she owes it to her own sense of dignity and propriety, to her love of

regulated freedom, of peace and order, to follow the example set in 1789, by applying through her State Legislature to her sister States, to unite with her in applying to Congress for a "declaratory or restrictive amendment," through the Convention.

Resolved, That until the remedies pointed out by the Constitution, and recommended by wisdom, experience and a spirit of moderation, have been exhausted, viz.: "the petition of the people for a redress of grievances," under the first amendment, the decision of the Supreme Court, under the second section of the third article, and the application for an amendment, under the fifth article of the National Constitution, it is neither the duty nor the interest of South-Carolina, nor can she, consistently with honor and good faith, with wisdom and prudence, with her attachment to tranquility and order, and with a sacred regard to her own example and influence in the Union, take any measures founded on a resort to sovereign rights and sovereign authority.

Resolved, That it is the opinion of the people of South-Carolina, as expressed at all their public meetings, that the Tariff Act of 1828 is unconstitutional; that even if it be Constitutional, it is, in the judgment of the same people, inexpedient as a National measure, and unjust in relation to the Southern States, on account of the great and sudden increase in the amount of duties; that since Congress regards the Tariff Act as Constitutional, and must legislate accordingly, South-Carolina, without waiving her denial thereof, and her right to try the question constitutionally, will apply to Congress, on the ground of inexpediency and injustice, to reconsider and modify the Law, consistently with a wise and temperate policy.

N. B. The debate occurred in Committee of the Whole.

SPEECH.

Mr. Chairman,

I HAVE heard with pain and sorrow, the opinion, that in the present crisis, it well becomes South-Carolina to approach her sister States, and the National Government, with the Sword in one hand, and the Olive Branch in the other: that she walks in the paths of honor and duty, when she offers the alternative of War or Peace. I may admire the chivalry and frankness of the sentiment, but I cannot deprecate too much a feeling so unnatural, so indiscreet, so unwise. We are, and I trust we shall ever continue to be, one family, bound together by the ties of a common ancestry, eminent for the cultivation of peace at home, and only glorious in foreign wars. Not one of these States has ever yet shed the blood of a brother, notwithstanding the collisions of interest, and the exasperation of angry passions. This, perhaps, is the most solemn and important lesson, which the rest of the world can learn from us: And shall we not profit by it ourselves? Be it, then, our unchangeable feeling, our irrevocable purpose, as it is our holiest duty and highest interest, that the sword never shall be drawn against the National Government, or a Sister State. Let the people of this country, in the East and the West, in the North and the South, engrave this sentiment on the table of their hearts, and reverence it as a religious truth. Let them resolve, and call God to witness the vow, that the voice of a Brother's blood shall never cry from the ground against them. To live and to die in this sentiment, is recommended by interest, advised by wisdom, and commanded

by duty. Let us take an illustration from the circle of domestic life. What son can think, without horror, of unsheathing the sword against a father, however unjust and even tyrannical? What brother can brook the thought, that he could ever be driven, by any extremity of injury or cruelty, to shed his brother's blood? Nature, Religion, public and private duty, the social feeling, the peace of families, have ordained these as irrevocable laws. Even the barbarous code of false honor, though it spares the friend, the neighbour, the acquaintance, no more than the stranger and the enemy, has respected the sanctuary of a household. And shall not this family of States reverence the commandments of a holier and nobler law, to them the only true law of honor and virtue, of enduring happiness, peace and improvement? Let them banish then forever from their intercourse, the language of the warrior, and all the thoughts, and feelings, and associations, which are crowded together in that single expression—War. Is one of them insulted by a thoughtless unfeeling brother? Let him remember, that violence must aggravate, but cannot cure the evil. Are some the victims of selfishness and injustice? They would do well to consider, that angry words and intemperate conduct can avail nothing, and may produce greater injuries. Are any the sufferers by a brother's usurpation or abuse of authority? What can threats and denunciations do, but to exasperate the guilty against the innocent? Let the nations of Europe employ war, and its ministers of wrath, to chastise the insolent, to exact justice from the unjust, and to humble tyranny; but let the people of each state, under every temptation and trial, arising from the National Government, or other states, rely only on the arguments of wisdom and moderation, and on the eloquence of friendship and forbearance. Our country is emphatically a land of regulated liberty, of laws and principles. Our government is pre-eminently the government of the people, the offspring of mutual concessions and common interests. There is, in the great body of the citizens of every state, a fund of good sense, of equity and candor, which, in the course

of years, will assuredly do that which is right. Let us never distrust, much less despair of them. What though, for a season, we may be reviled, or injured, by sister states, or be oppressed by the power of the general government? What though we may see, in our judgment, with absolute certainty, that we are the victims of sectional prejudice, or local interests, of fraud, intrigue, and corruption? Let us never distrust our country, nor despair of the Republic. On the contrary, let us cling fast to the hope, that Americans will, at the last, respect truth and reason, and yield to manly, temperate, candid remonstrance, and brotherly expostulation. Let us, then, before we approach the sanctuary of our Parent* Government, banish the feelings of anger from our hearts, the language of menace from our lips, and the expression of resentment from our countenance. Before we address the august assembly of sister states, let us remember, that we cannot honor and respect them too highly, nor act ourselves with too much dignity, self reverence, and moderation. Before we enter the sacred presence of our country, let us cast far away the sword, and speak to her only in the spirit of faith and of hope, of peace and of love.

Pardon me for having detained you thus long from the great object of my remarks. But if you honor the son or the brother, who mourns over the dissensions of his family, I know that you will respect the feelings which I have expressed. No one can behold unmoved the present crisis; or be insensible to the delicate and perilous situation of South-Carolina. The language of her Representatives in Congress, the Resolutions of the Legislature at the last session, and numerous public meetings of the citizens, have placed her almost in the attitude of resistance. The people have left it to their Legislature to decide what becomes her in point of dignity and honor, of duty and interest. For myself, I need not say, that I have objected anxiously and earnestly to the course, which has been thus far pursued. I

* See Note A.

have felt, and thought, and said, that it was unwise and unconstitutional. I say so still. But I shall waste neither your time nor my strength, in an argument on the constitutionality of the Tariff, founded on the construction of the National Charter. Waiving that topic, so fruitful in the principles of political science, in the lessons of our own experience under the Confederacy, and in the illustrations to be gathered from our history since 1789, I proceed to offer my views: And though I shall draw largely on your patience and liberal forbearance, I know that your sense of duty will ask no apology, because I am discharging my duty, according to the best of my judgment and conscience, to our common country.

First, then, I shall endeavor to show you, that cotemporaneous expositions of the Constitution, acted upon successively for years, ought to settle its construction, and that no State can wisely or lawfully call them in question; or consistently with her relations to the General Government and the other States, resist the authority which they recognize.

No one, I believe, has ever disputed the wisdom and importance of this rule. It is indispensable to peace and order in all states of society, and under all forms of government. It is respected in all; and no person acquainted with history, can doubt that a succession of cotemporaneous expositions of the unwritten, customary law of Europe has led the way insensibly to a series of improvemonts, that have made her what she now is, compared to her condition, during the dark ages. But there is no country, in which this principle is more valuable, or ought to be held more sacred, than in America. Our's is a government of the people, and all public officers are the responsible agents of the people. Their acts are those of the people, through their lawful representatives, they affect the rights and interests of the people, and the people only are the ultimate tribunal to ratify or reject their measures. Hence, in our country, a construction of the constitution publicly asserted by one department, repeatedly acted upon and acquiesced in through a period

of years, by the people and the other departments, acquires the undoubted force of law. If such an exposition does not settle the meaning of the constitution, nothing ever will: and yet a settled construction of that instrument is indispensable to private and public rights and security; to peace, order, and prosperity. It may be asserted with confidence, that such an exposition, so published, sustained, and illustrated, cannot exist, where the power exercised was not granted. And if, in the opinion of statesmen of an after age, the power had not been conferred, the judgment of discretion and wisdom would be, that such a construction must be respected and obeyed as LAW, being the solemn act of those, on whom devolved the right and responsibility of deciding, and whose duties, interests and opportunities made them preeminently the fittest judges. If such would be the sound, safe doctrine of the patriot, even on such a supposition, how much more sacred ought the construction to be esteemed, when a minority only of intelligent men, have pronounced, in an after age, against it; while the great majority of the people and of their rulers, whether state or national, have never doubted. In either case, such a construction acquires an authority, too sacred and binding, to be safely and wisely controverted, much less to be denied and resisted. Even if we could suppose a vast majority of the people and of their rulers to hold a different opinion, in an after age, yet if they consulted their own security, dignity and interest, the consistency and stability of their institutions, and the respect due to the wise and good of a former generation, it would become them to tolerate no departure, till an amendment had been constitutionally adopted.*

Secondly. I proceed now to the application of this principle. I then say, that according to the true theory and sound construction of our State and National Constitutions, the Judiciary is the lawful, competent tribunal to decide on the constitutionality of any act of the Legislature, whether it

* See Note B.

affects the rights of an individual or of a State: And that a practice of forty years has established this as the opinion of the people both of the State and of the Union, and as the judgment of the Legislative, Executive and Judicial Departments, both national and local.

Those, who framed the constitution of this State, certainly intended, that it should embrace a provision for every known difficulty and emergency, which the history of their own or of other countries had recorded. With a view to cases of a peculiar character, or of extraordinary difficulty, they ordained the remedy of amendment, not through a Convention, but by two successive Legislatures. But for all cases of an *ordinary* character, they meant to provide, and I contend, they have amply provided, by the proceedings of impeachment and indictment, by the Courts of Justice and the elective Franchise. Now, it is obvious, that cases of neglect of duty, and of abuse or usurpation of power, were regarded by the Convention, as matters of *ordinary* breach of duty, and were intended, according to the theory of the Constitution, to be remedied, in the well established modes abovementioned. Abuse and usurpation of power were familiar events in English and in our own Colonial history. The Revolution, in fact, had arisen from them: and one great object of the framers of our new Constitutions, was to guard against the possibility of a recurrence to first principles, to revolutionary measures. If they regarded abuse and usurpation of power, as offences of a well known and ordinary character, like neglect of duty, then they considered them as amply provided for, (in all the forms, in which they had previously occurred) by indictment and impeachment, by elections and courts; while peculiar and extraordinary cases came under the provision for amendments. The irresponsibility to us of the King and his Ministers, of the Parliament and of the King's Governors and Judges, were the causes of the Revolution, and these evils, the like of which we have not yet witnessed, and doubtless never shall witness under our systems, are all provided for in the modes already mentioned. There

remains then nothing, upon which the reserved rights and powers of the primitive sovereignty of the people can act, except on those unforeseen, unexampled cases, which occur at far distant intervals, in the best ordered states of society, and under the best regulated governments. No such events have occurred since the Revolution ; and I do not believe, that even our children's children are destined to witness them. Our State and National authorities have furnished many instances of neglect and misconstruction, of abuse and usurpation of power ; yet they have all been punished or remedied, without resort to the doctrine of primitive sovereignty, or to first principles. Indeed, I consider it among the highest proofs of the wisdom and foresight of the framers of our constitutions, that they have provided, so comprehensively and effectually, by Courts of Justice and Elections, and Amendments, against the necessity of a recurrence to primitive rights, to reserved sovereignty, or to revolutionary measures.

With these principles in view, I shall now proceed to show you, that under the practical exposition of our own State Constitution of 1790, the neglect, abuse or usurpation of power, whether by the Legislative or Executive Departments, has been invariably remedied, through the ballot box and the Courts. Of the former, I shall say nothing, for the exercise of the remedial authority of the people, whenever they are dissatisfied with their rulers, is so familiar, of such continual occurrence, and so peaceable, yet effectual in its operation, as to need not a word. But what I deem all-important to be noticed, is the position, which I shall now endeavor to establish, that whenever neglect, abuse or usurpation of power, by the Legislature or Executive, whatever may have been its form or object, has affected the life, the liberty, or the property of the humblest individual, the Courts of Justice have taken cognizance of the question, have repeatedly decided the act to be unconstitutional, and protected the individual against the Legislature and the Executive, even in the exercise of their highest sovereign authority. And mark the result, the people

have acquiesced in the judgment of their Courts; and the very Departments, whose proceedings were declared repugnant to the Constitution, have acted on the supposition, that the Courts had exercised only *a well-known and lawful jurisdiction.* Now, it is difficult to conceive an act of the Legislature, and still less of any other branch of the Government, unless it be purely an act of political discretion, (Madison's Message on the Bonus bill, 3d March, 1817) which does not present a case for the judgment of a Court; because no such act can be imagined, which does not affect, directly or indirectly, life, liberty or property. Let the case exist, and if the individual, who is affected, chooses to demand a trial, the combined power of the Legislative and Executive Departments, cannot constitutionally withdraw the question from the jurisdiction of the Courts.* Suffer me, in illustration of these views, to notice some of the most remarkable instances, in which the Judges have pronounced the acts of the Governor and Legislature to be repugnant to the Constitution.

In Bowman *vs.* Middleton, they decided in 1792, that an Act of the Colonial Assembly, which had transferred the freehold of A. to B. was against common right, and the principles of Magna Charta. 1 Bay, 252. In Zylstra *vs.* the City Council, in 1794, Judge Waties held that the Legislature could not give to the Court of Wardens the power to convict of penalties to any amount without a Jury. 1 Id. 382. In White *vs.* Kendrick, in 1806, that the Legislature could not constitutionally increase the jurisdiction of Justices beyond Twenty Dollars. 1 Brevard's Digest, p. 476, N. In Cohen *vs.* Hoff, in 1814, that the Act of 1769, re-enacted by that of 1799, authorising the Governor to appoint a temporary substitute, in case of the sickness of a Judge, was inconsistent with the Constitution. 2 Tread. 656. In January, 1817, that an Act, in pursuance of an amendment of the Constitution, was unconstitutional; because it had been ratified on the same day with the amendment. In Hayes *vs.*

* See Note C.

Harley, in 1817, that Ordinaries are Judges, not removeable by the Legislature, and that the Act of 1812, which declared that Ordinaries then in office, should go out on the 1st Dec. 1816, was unconstitutional. 1 C. C. D. (Mill.) 267. In the State *vs.* Lyles, in 1821, that Ordinaries being Judges, hold their offices during *life*, though elected by the People, under the Act of 1812, which limits their office to *four* years. 1 M'C. 238. In the State *vs.* Hutson, in 1821, the same point as to an Ordinary appointed by the Governor, *till an election*. 1 Id. 240. In the State *vs.* M'Clintock, in 1821, that a Sheriff, though appointed by the Governor, under the Act of 1808, *only till an election*, held under the Constitution for four years. 1 Id. 244. In the State *vs.* Allen, in 1822, that the Act which imposed a tax of $10,000 on Lottery Office Keepers, and authorised the Collector to issue an execution for it, was unconstitutional. 2 M'C. 55. In Dunn *vs.* the City Council, in 1824, that the Legislature could not constitutionally empower the City Council to take more of a Lot, than was required for widening the street. Harp. L. Rep. 189.

Nor has this power been exercised by the Court, in relation to the Legislative department only. The Executive also has been declared in like manner to have exercised authority not conferred. In August, 1813, Judge Bay decided, in the case of Lamb *vs.* Youngblood, that a Court Martial, organized under the General Orders of Governor Alston, to try militia men under the rules and articles of war, was unauthorised. He accordingly discharged Lamb from the arrest; the Governor acquiesced; the Legislature was summoned to meet in September, and passed an amendatory Militia Law. The Governor, in his General Orders, says, "The Commander in Chief receives the decision of the Court, with the submission due to the constituted Tribunals of a free State." Thus, in 1798, in Hawkins *vs.* Arthur, 2 Bay. 195, a grant of part of the Saxegotha Township was declared void. In 1800, in the case of Wm. H. Gibbes, Master in Equity, the Court of Chancery decided, that he held his

office during good behavior, and was not removable by the Legislature, and that the Governor's Commission to another person was void. 1 So. Ca. Eq'y. R. 587. In 1804, in Rowe *ads.* the State, 2 Bay, 565, and in State *vs.* Williams, in 1817, 2 N. & M'C. 26, that the Governor could not remit that part of a penalty, which goes to the informer. In Jeter *ads.* the State, in 1821, that the terms of the Governor's commission cannot decide the tenure of an office; and in the same year, they twice again decided the same point, in State *vs.* Hutson, 1 M'Cord, 240; and State *vs.* M'Clintock, 1 Id. 245. Thus, then, it appears, that the Judges have repeatedly exercised this power: And it is notorious, that in all these cases, the People at large acquiesced, and that the Legislative and Executive Departments have also acknowledged and confirmed the jurisdiction thus asserted and acted upon. When has the Legislature or the Executive denied or resisted the judgment of our Courts? Who has ever heard of any attempt to impeach a Judge for an usurpation of power, because he claimed and exercised this authority? And yet no intelligent man can look at the instances, which have been enumerated, without seeing, that they called in question, in various forms, the *highest sovereign* authority of both the coordinate branches of the Government. Nor can he fail to see, that they present abundant illustrations of what has been already said,—that scarcely any act can be done by the Legislative or Executive Departments, which cannot become a case for the judgment of a Court, because it touches invariably in some form or other, the life, liberty or property of the citizen. Hence, I conclude, that the practical consequence from this review, and the public acquiescence in the law, as thus settled by the Courts, is, that any act of abuse or usurpation of power by the Legislature or Governor, which can become a case between an individual and the public, is a case of *ordinary* breach of duty, and must be remedied, according to the true theory of the Constitution, through the Courts of Justice.

This series of decisions establishes then, beyond all

controversy, that this is the true, cotemporaneous, continued interpretation of the State Constitution. Nothing but an *amendment* can alter this Law--so often publicly declared, and solemnly approved. Nor let us forget, that if a State be, in any respect, properly and peculiarly *sovereign*, it is in relation to *her own* Tribunals and Officers, created only by, and responsible only to, herself. And yet, she has acknowledged her amenability to *those very* Courts, for the Acts of her *State* Departments, under her own *State* Constitution. And here, I shall remark once for all, with a view to the decisions both of the State and the National Tribunals, that the *result* of the Judicial inquiry does not affect the position, that the Courts have repeatedly *asserted* in various forms, their right and duty to examine the constitutionality of Legislative and Executive proceedings. If they had in every instance decided *favorably*, still those Departments and the people at large would have been publicly notified, that the Judges claimed this jurisdiction; and acquiescence would have amounted to acknowledgment, that they had acted constitutionally. But, they have, on the contrary, so often decided *unfavorably*, and their adjudication has been so often recognized. both affirmatively and negatively, that it ceases to be a case of doubtful silence, or a casus omissus. In a word, the Judiciary has frequently *resisted* the usurpations of the other Departments; but neither these nor the people have ever resisted *that resistance*, as an alledged usurpation by the Judiciary. This course of events has settled the construction of the Constitution.

I shall state merely by reference to the cases, various other instances, in which the constitutionality of Acts of the Legislature or Governor has been considered and confirmed by the Courts. As to the Legislature—See Lindsay *vs.* Commissioners of East Bay, 1796, 2 Bay. 38. Collins *vs.* Kincaid, 1804, 2 Bay. 536. State *vs.* O'Driscoll, 1815, 2 Treadway, 718. State *vs.* Antonio, 1816, 2 Id. 776. Eggleston *vs.* the City Council, 1817, 1 C. C. D. (Mill.) 45. Murray *vs.* Alston, 1817, 1 Id. 128. Wilson *vs.* Blaylock, 1818, 2 Id. 351. Stark *ads.* M'Gowan, 1818,

Nott & M'C. 387. Alexander *vs.* Gibson, 1819, 1 Id. 480. Bulow and others *vs.* City Council, 1 N. & M'C. 527, in 1819. State *vs.* Helfrid, 1820, 2 Id. 283. Lange *vs.* Kohne, 1821, 1 M'C. 115. Cruickshanks *vs.* City Council, 1821, 1 M'C. 360. Billis *ads.* the State, 1822, 2 Id. 12. Belcher *ads.* Commissioners of Orphan House, 1822, 2 Id. 23. City Council *vs.* Rogers, 1822. 2 Id. 495. State *vs.* Harrison. Same *vs.* Seaborn, 1823, Harp. L. Rep. 88. City Council *vs.* Plowden Weston. 1824, Id. 340. M'Kenna *vs.* Commissioners of Roads, 1824, Id. 381. Peake *vs.* Cantey & Johnson, 1825, 3 M'Cord, 107. Talvande *vs.* Cripps, 1825, 3 Id. 147. Annsley *vs.* Timmons, 1825, 3 Id. 329. All the above were in the Court of Law. In Equity, the following cases furnish instances: Nelson *vs.* Rutledge, 1791, 1 S. C. Eq'y. R. 194. Washington *vs.* Beresford & Huger, 1792, 1 Id. 361. Byrne *vs.* Stewart, 1812, 3 Id. 466. The following case relates to the Governor—State *vs.* Fuller, 1821, 1 M'Cord, 178.

Let us now turn to the National Constitution; and under that, we shall find the same clear, original, continued exposition, but of a far more important character, as embracing the National and State Constitutions, the acts of the President, the Laws of Congress and of the States, the Judgments of State Courts, *and the authority of the States in the exercise of their highest sovereign powers*, as well as the rights of individuals. Before we enter on this review, some preliminaries will be of material consequence.

It is obvious, that, under the Confederation, there was but one point of view, in which we could have a National Court, viz. as to questions arising out of a state of war. Accordingly we find, that although the Admiralty jurisdiction remained with the States, yet Congress had power to constitute a Court of Appeals from the judgments of the State Courts. Art. Conf. A. 9. 3d Dallas, 19, 42, 54, 56, 88, 120. 5th Cranch, 115, U. S. *vs.* Peters. Nor was an appellate power over State Tribunals any novelty under the new Constitution. 1 Wheat. 345, Martin *vs.* Hunter. And in Chisolm *vs.* Georgia, 2 Dall. 474. Chief

Justice Jay, one of the purest, wisest, and best of our Revolutionary Patriots and Statesmen, says—

"Prior to the date of the Constitution, the people had not any national tribunal to which they could resort for justice; the distribution of justice was then confined to State judicatories, in whose institution and organization the people of the other States had no participation, and over whom they had not the least controul. There was then no general Court of appellate jurisdiction, by whom the errors of State Courts, affecting either the nation at large or the citizens of any other State, could be revised and corrected. Each State was obliged to acquiesce in the measure of justice, which another State might yield to her, or to her citizens; and that even in cases, where State considerations were not always favorable to the most exact measure. There was danger that from this source animosities would in time result; and as the transition from animosities to hostilities was frequent in the history of independent States, a common tribunal for the termination of controversies became desirable, from motives both of justice and of policy.

"Prior also to that period, the *United States* had, by taking a place among the nations of the earth, become amenable to the laws of nations; and it was their interest as well as their duty to provide, that those laws should be respected and obeyed; in their national character and capacity, the *United States* were responsible to foreign nations for the conduct of each State, relative to the laws of nations, and the performance of treaties; and there the inexpediency of referring all such questions to State Courts, and particularly to the Courts of delinquent States, became apparent. While *all* the States were bound to protect *each*, and the citizens of *each*, it was highly proper and reasonable, that they should be in a capacity, not only to cause justice to be done *to* each, and the citizens of each; but also to cause justice to be done *by* each, and the citizens of each; and that, not by violence and force, but in a stable, sedate, and regular course of judicial procedure."

Before the adoption of the Constitution, also, Luther Martin, in his memorable address to the Legislature of Maryland, in January, 1788, prefixed to Yates's Debates, expresses himself thus:

"By the *third article*, the judicial power of the United States is vested in *one supreme court*, and in such *inferior courts*, as the congress may from time to time ordain and establish: These courts, and *these only*, will have a right

to decide upon the laws of the United States, and all questions arising upon their construction, and in a judicial manner to carry those laws into execution ; to which the courts both superior and inferior of the respective states and their judges and other magistrates are rendered incompetent. To the courts of the general government are also *confined* all cases in law and equity, arising under the proposed constitution, and treaties made under the authority of the United States--all cases affecting ambassadors, other public ministers and consuls--all cases of admiralty and maritime jurisdiction--all controversies to which the United States are a party--all controversies between two or more states--between a state and citizens of another state--between citizens of the same state, claiming lands under grants of different states, and between a state or the citizens thereof, and foreign states, citizens, or subjects. Whether therefore, any *laws* or *regulations* of the *congress*, or any *acts* of *its president* or *other officers* are *contrary to*, or not *warranted by*, the constitution, rests *only* with the judges who are *appointed* by congress to *determine ;* by whose determinations *every state* must be *bound.*"

Let us look also at the Federalist on this subject, (No. 78, et Seq.) and we shall see that the right of the Courts of the Union to judge of the constitutionality of Laws, is expressly asserted, as the true construction and a most important feature of the new Constitution. The same position is equally apparent in the debates at the first session of the First Congress in 1789, when the constitutionality of a law, organizing the Department of Foreign Affairs, came up for discussion : during which many of the members expressed the opinion, that the Judges were the only proper Tribunal for deciding such questions ; whilst others held, that the Legislature ought first to act, leaving the final judgment, where it *eventually* belonged, to the Courts. See the Debates, 1st vol. p. 219 to 596, and 2d vol. p. 205 to 324. What makes this matter the more interesting and important is, that although the *Supreme* Court had not adjudged any Act of Congress to be *repugnant* to the Constitution, prior to 1800, yet they had decided in *favor* of the constitutionality of Laws of the Union. In some instances, however, the Judges had so decided separately on Circuit. 4 Dall. p. 19. And Chief Justice M'Kean, of the Supreme

Court of Pennsylvania, as late as 1798, uses the following remarkable language, in the Commonwealth *vs.* Cobbett, 3 Dall. 473, after the national Judges had repeatedly decided *against* the claims of the *States*, in some very important instances :

"The divisions of power between the national, federal, and state governments, (all derived from the same source, the authority of the PEOPLE) must be collected from the constitution of the *United States*. Before it was adopted, the several States had absolute and unlimited sovereignty within their respective boundaries ; all the powers, legislative, executive, and judicial, excepting those granted to Congress under the old constitution : They now enjoy them all, excepting such as are granted to the government of the *United States* by the present instrument and the adopted amendments, which are for particular purposes only. *The government of the United States forms a part of the government of each State ;* its jurisdiction extends to the providing for the common defence against exterior injuries and violence, the regulation of commerce, and other matters specially enumerated in the Constitution ; all other powers remain in the individual states, comprehending the interior and other concerns ; *these combined, form one complete government.* Should there be any defect in this form of government, or any collision occur, it cannot be remedied *by the sole act of the Congress, or of a State ;* the people must be resorted to, for enlargement or modification. If a State should differ with the *United States* about the construction of them, there is no common umpire but the people, *who should adjust the affair by making amendments in the constitutional way, or suffer from the defect.* In such a case the Constitution of the *United States* is federal ; it is a league or treaty made by the individual States, as one party, and all the States, as another party. When two nations differ about the meaning of any clause, sentence, or word in a treaty, neither has an exclusive right to decide it ; they endeavour to adjust the matter by negociation, but if it cannot be thus accomplished, each has a right to retain its own interpretation, until a reference be had to the mediation of other nations, an arbitration, or the fate of war. *There is no provision in the Constitution, that in such a case the Judges of the Supreme Court of the United States shall control and be conclusive :* neither can the Congress by a law confer that power. There appears to be a defect in this matter, it is a *casus omissus*, which ought in some way to be remedied. Perhaps the Vice-President and Senate of the *United States*,

or commissioners appointed, say one by each State, would be a more proper tribunal than the Supreme Court. Be that as it may, *I rather think the remedy must be found in an amendment of the Constitution.*"

Here then was a denial of the authority, which the National Courts *had previously* exercised, and *have continued to exercise ever since.* Thos. M'Kean was certainly a great man; but greater men than himself, repeatedly, in the judgment seat of the Union, have denied and resisted his doctrine, have acted accordingly, and the Departments of the General Government, the People of the Union, and the majority of the States, over and over again, as every separate case occurred, have acquiesced in the authority claimed, and have ratified it as constitutional. Even the Chief Justice himself would be obliged to admit, that this branch of jurisdiction was no longer a "casus omissus." Those who have studied the Constitution and the Federalist, as every American ought to study them, cannot fail to observe how little the Chief Justice has discriminated between the *national* character of the *present*, and the *federative* character of the former, government: nor can they fail to notice the apparent inconsistency between tracing every thing to the *People* on the one hand, as the *origin*, and on the other hand referring every thing to them eventually as the *arbiters*, and yet considering the Constitution, with regard to the supposed casus omissus, as a *Treaty* or *League*.

I proceed now to show the most important instances, in which the Courts have decided on the question of the constitutionality of Acts of the Legislative and Executive Departments. In conducting this enquiry, I shall show you First, the chief instances, in which they have done this, as to the Laws of the Union: Secondly, as to the Acts of the Executive of the Union: Thirdly, as to the Laws of particular States: and, lastly, some other instances in which they have acted on this principle.

1st. And first as to the *Laws* of the UNION. In 1792, Jay, Cushing, and Duane, in the Circuit Court at New-

York, decided that the Act of Congress, which required the Judges to execute the *Pension Act*, was unconstitutional, 2 Dall. 410: In 1793, in the case of Chisolm against Georgia, Judges Jay, Blair, Cushing and Patterson, decided against the remonstrance of Georgia, that she was liable to be sued as a Defendant by an Individual, in the Supreme Court, under the Constitution and Act of Congress. 2 Dall. 429. This decision was the more remarkable and important, because Virginia had protested in like manner. 2 Id. 429. In Hylton *vs.* the United States, in 1796, the Supreme Court decided that a tax on Carriages was not a direct tax, and was therefore constitutionally laid. 3 Dall. 171. In Marbury *vs.* Madison, in 1801, that an Act of Congress, giving to the Supreme Court jurisdiction in a particular class of Mandamus cases, was unconstitutional. 1 Cranch, 137. In 1803, in Stuart *vs.* Laird, that the Practice under the Constitution has settled its construction, as to the right of Congress to require the Judges of the Supreme Court to do the duty of Circuit Judges. 1 Cranch, 309. In Fisher *vs.* Blight, in 1805, that Congress had power to give to the United States a preference in certain cases of Insolvency. 2 Cranch, 358. In 1813, in Fairfax *vs.* Hunter, they asserted and exercised their jurisdiction over the High Court of Appeals of Virginia, 7 Cranch, 604. In 1816, in the same case, they again did the same, under the C. U. S. and A. C. 1 Wheat. 304. In 1819, in M'Cullock *vs.* Maryland, they did the same, and decided the constitutionality of the Bank Charter. 4 Wheat. 316.* In 1821, they did the like in the case of Cohens *vs.* Virginia. 6 Wheat. 264.† In 1823, they did the like, in the case of Buel *vs.* Van Ness. 8 Wheat. 312. In 1824, in Osborn *vs.* B. U. S. that the Act of Congress, enabling the Banks to sue in the Circuit Court of the U. S. was constitutional. 9 Wheat. 738. And in 1828, in Ross *vs.* Doe, 1 Pet. 655, the same as in Buel *vs.* Van Ness. In 5 Wheaton, 1, 51, Houston *vs.* Moore, the Supreme Court declares, that when

* See Note D. † See Note E.

Congress has acted on a subject of concurrent jurisdiction, "all interfering State regulations must necessarily be suspended in their operation." In 9 Wheat. 1, 211, Gibbons *vs.* Ogden, they again say, "In every such case, the Act of Congress or Treaty is supreme, and the Law of the State though enacted in the exercise of powers not controverted, must yield to it." A similar position is taken in Ogden *vs.* Saunders, 12 Wheat. 213. And in Annesley *vs.* Timmons, 3 M'Cord, p. 329, 333, our present Court of Appeals, in So. Ca. concede, that whenever a case of concurrent jurisdiction, the laws of a State and those of the Union, conflict, the latter are of paramount authority, and must prevail; being the Supreme Law of the land.—See Constitution of U. S. A. 6, § 2.

Let us now advert to the second class of cases, viz.: as to the President. In 1801, in Marbury *vs.* Madison, they decided, that the President could not constitutionally command the Secretary of State, in his Ministerial (not his political) capacity to withhold a commission from a Justice of Peace. 1 Cranch, 137. In Little *vs.* Barreme, in 1804, that the President's instructions could not protect the Commander of a National vessel, if against law. 2 Cranch, 170. And in 1827, in Martin *vs.* Mott, that the President was the sole judge, under the Constitution, when the militia should be ordered out. 12 Wheat. 19.

Thirdly. Let us now consider the third head of our subject, viz. the constitutionality of State proceedings. In Georgia *vs.* Brailsford, in 1794, that the Sequestration Act of Georgia, was annulled by the Treaty of 1783. 3 Dall. 4. In 1795, in Vanhorne *vs.* Dorrance, the Circuit Court of U. S. for Pennsylvania District, decided, that the quieting and confirming act of Pennsylvania was unconstitutional. 2 Dall. 304. In Ware *vs.* Hylton, in 1796, that, although under the Sequestration Act of Virginia, the Defendant had paid the debt due to the Plaintiff (a British creditor) into the State Treasury, under the Act, yet that the treaty enabled the Plaintiff to recover it again from the Defendant. 3 Dallas, 199. And the same year, they decided the like

point, in the case of Clerke *vs.* Harwood, under the Maryland Confiscation Law. 3 Dall. 342. And in 1809 in United States *vs.* Peters, that a payment into the Treasury of Pennsylvania, under a Legislative act, did not protect the Debtor. In 1797, in United States *vs.* Dorrance, that the Naturalization Act of Pennsylvania, was void under the Constitution of Pennsylvania. 2 Dallas, 371. In 1804, in Ogden *vs.* Blackledge, that an act of North-Carolina was a nullity, 2 Cranch, 272. In 1809, in United States *vs.* Judge Peters, that the Legislature of a State, (Pennsylvania) could not determine the jurisdiction of a Court of the Union, nor annul its judgments. 5 Cranch, 115. In 1810, in Fletcher *vs.* Peck, that a party to a contract cannot annul it, though that party be a sovereign State—and that a repealing law of Georgia was a nullity, as impairing the obligation of contracts. 6 Cranch, 87. In 1812, in New-Jersey *vs.* Wilson, that an act of New-Jersey, repealing a law, granting an exemption from taxes, was also void. 7 Cranch, 164. In 1815, in Terrett *vs.* Taylor, that Virginia could not grant the lands of the Episcopal Church to the use of the poor. 9 Cranch, 43. In 1815, in Pawlet *vs.* Clark, the same point, that a Legislative grant of property is irrevocable, and that an act of Vermont, repealing a grant of unappropriated glebes was unconstitutional. 9 Cranch, 292. In 1817, in Chirac *vs.* Chirac, that a Maryland state law of Naturalization was a nullity, the jurisdiction being solely in Congress. 2 Wheat. 259. In Sturgis *vs.* Crowninshield, in 1819, that a State Insolvent Law of New-York, was unconstitutional. 4 Wheat. 122. In M'Millan *vs.* M'Neill, in 1819, the same point as to a similar law of Louisiana. 4 Id. 209. In 1821, in Farmers and Mechanics Bank *vs* Smith, the same point as to a similar Pennsylvania law. 6 Wheat 131. And in 1827, in Ogden *vs.* Saunders, they again decided against the validity of a New-York Insolvent Law. 12 Wheat. 213. In 1819, in M'Culloch *vs.* Maryland, that the State act taxing the Bank was unconstitutional, 4 Wheat. 316. And in 1824, in Osborn *vs.* Bank United States, the same point as to the Ohio act. 9. Id.

738.* In 1819, in Dartmouth College *vs.* Woodward, 4 Wheat. 518, that a State Law of New Hampshire, altering the Charter, was void. In Green *vs.* Biddle, 1823, that an act of Kentucky, as to occupying claimants of land, was void--that the compact between Virginia and Kentucky is a contract within the 1st cl. 10th §. and 1st Art. of Constitution of the United States, forbidding a State to impair the obligation of contracts. 8 Wheat. 1. In 1823, in the case of the Society for Propagating the Gospel in Foreign Parts *vs.* Wheeler and the Town of New Haven, (in Vermont) that an act of Vermont, granting the land of the Plaintiffs, was void. 8 Wheat. 464. In Gibbons *vs.* Ogden, in 1824, that the Steam Boat Laws of New-York were unconstitutional, so far as they interfered with vessels licensed under laws of the United States, to carry on the coasting trade. 9 Wheat 1. In 1825, in Weyman *vs.* Southard, 10 Wheat. 1, and Bank United States *vs.* Halsted, 10 Wheat. 51, that two Kentucky statutes, as to taking Bank Notes in payment under executions, and as to selling property at not less than three fourths of the appraised value, were not binding on Courts of the United States. In Brown *vs.* Maryland, in 1827, that a Maryland law, requiring an *Importer* of *Foreign* Goods to take out a license for selling them by *wholesale*, was unconstitutional. 12 Wheat. 419.

Fourthly. Let us now turn to the fourth class of miscellaneous points In Marbury *vs.* Madison, in 1801, they decided, that the Secretary of State (of the U. S.) though exempt from process in his *political* capacity, can be compelled by mandamus to deliver a Commission, notwithstanding the express prohibition of the President. 1 Cranch, 137. In 1812, in M'Kim *vs.* Voorhies, that a State Court, (of Kentucky) cannot enjoin a judgment of the U. S. Courts. 7 Cranch, 279. In 1817, in Slocum *vs.* Mayberry, that if a State Court takes property from an officer of the United States, under a lawful seizure, the U. S. Court can compel a redelivery by attachment against the State Officer. 2

* See Note F.

Wheat. 1. In M'Clung *vs.* Silliman, in 1821, that a State Court cannot issue a mandamus to a Register of the U. S. Land Office. 6 Wheat. 598. In Anderson *vs.* Dunn, in 1821, that the Speaker's warrant to arrest the Plaintiff, was a constitutional exercise of power. 6 Wheat. 204. In the Governor of Georgia *vs.* Madrazo, in 1828, that the State was a party, because her Chief Magistrate was defendant by his official name—and, therefore, the Court had no jurisdiction under the 10th amendment. 1 Pet. 110. In 1828, in the American Ins. Cy. *vs* Canter, that the Government of the United States can acquire Territory, under the powers to make war and to make treaties : and that in legislating for a Territory, Congress exercises the combined powers of the General and State Governments. 1 Pet. 511.

This review is assuredly sufficient to satisfy every reasonable man, that the Courts of the Union have asserted and acted under the authority to consider and decide—1st. The Constitutionality of Acts of Congress—2d. Of any order or authority alledged to be in pursuance of the Constitution and National Laws—3d. The validity of State Laws—4th. The legality of the Judgment of State Tribunals, whenever they have denied a right, or exemption, claimed under the Constitution, Treaties, Laws, or other authority of the Union, or have asserted a right inconsistent with them—5th. They have decided against the remonstrances or claims of States, made in the most solemn manner, and manifesting the exercise of their highest sovereign authority—In fine, they have protected the citizen against the officers of the Union, and have sanctioned the lawful authority of these over those : They have defended the privileges of the Alien, and even of Alien Corporations, against the Laws and Judges of the States : They have vindicated the rights of the citizen against the Legislature and Courts of his own State ; and those of the Union against the assertion of State rights : They have called in question, and decided upon, the right of the States to pass laws to quiet and confirm the titles of their citizens, and of occupying claimants of lands : They have decided as to the power of the States to tax ;

as to navigation on their own waters; as to naturalization and insolvent laws; as to the authority to repeal their own acts; as to their claim to control officers of the Union; to modify their own corporations; to regulate the time and mode of collecting debts; and to restrain the powers of the Union. In two (2) cases, they have decided against, and in six, (6) in favor of the constitutionality of Acts of Congress. In two (2) instances against, in two (2) in favor of the President of the United States, and in one (1) against the Secretary of State of the United States. In four (4) instances, they have adjudged State Laws to be valid; but in twenty-four (24) to be invalid. In twelve (12) cases, they have affirmed the judgments of State Courts; but in seventeen, (17) they have set them aside. In six (6) instances, they have asserted and decided on the constitutionality of their appellate power; and in twenty-two (22) no objection has been made. In eight (8) cases, they have had the States before them by name, as well as in reality, and in five (5) remotely and eventually, though not nominally and necessarily.*

In the course of the events, which have been above enumerated, the Courts of the Union have had the acts or claims of the States before them, and have had to decide, in relation to them, expressly or by implication, various points, to the following amount: As to North-Carolina, one (1); as to South-Carolina, one (1);† as to Massachusetts, two (2); as to New-Hampshire, three (3); as to Connecticut, three (3); as to Kentucky, three (3); as to Tennessee, four (4); as to Mississippi, three (3); as to Vermont, four (4); as to Rhode Island, four (4); as to New Jersey, four (4); as to Louisiana, five (5); as to Georgia, seven (7); as to Ohio, seven (7); as to New-York, eleven (11); as to Pennsylvania, eleven (11); as to Virginia, eleven (11); and as to Maryland, fifteen (15); making in all, an aggregate of ninety-nine (99). Of the Old States, only Delaware, (she, who was the first to

* See Note G. † See Note H

adopt this Constitution) appears never to have been before the Courts of the Union : and of the New States, only Maine, Indiana, Illinois, Alabama and Missouri. No one, assuredly, of these six States, would now hold herself at liberty to question the high constitutional authority of the national judiciary, thus publicly, solemnly, repeatedly asserted and exercised; and, beyond all question, approved and ratified by the People of the Union and of the States, by the Legislative and Executive Departments of the National Government, and by the Legislative and Judicial Departments of the States. Although, it is true, particular States have resisted at times; yet, as each has appeared in its turn, on the stage of controversy, the antagonist of the General Government, or of its Judiciary, the majority of the Union has looked on in silence. And when we remember, that they are free and intelligent, the constituents of the one party, and the brethren of the other; having the same rights, and subject to the same responsibilities; that the cause of the one is the cause of all; that abuse or usurpation of power as to one, is the same as to all, we must say, that this country has pronounced, in the most courteous form, to the States, which have resisted, but in the most clear and satisfactory, in the most dignified and impressive manner, as to the Courts, which have decided against them, that the *former*, and *not* the *latter*, have erred. New Hampshire and Vermont, New Jersey, Ohio and Kentucky, New-York and Pennsylvania, Virginia, Maryland and Georgia, have asserted *their sovereign rights against the authority of the Union*, and have appealed from the judgment of the National Courts, to the Nation itself, and to the States. Those August Tribunals have heard the appeal, with the dignity, candor and solemnity, which became themselves; with the moderation and wisdom, which the occasion required; with the respect and attention due to the remonstrances and the rights of free, intelligent, powerful States; and with the fidelity and impartiality, which their servants, the Judges, claimed and expected at their hands. Those Tribunals have been sitting in judg-

ment nearly forty years ; and, surely, a more affecting, a nobler spectacle, has rarely been witnessed. And they have decided, again and again, in favor of the National Judiciary, against the States, by a vast majority in point of numbers and power, of impartiality and justice, of learning and talents.

The People of this country have thus furnished the most satisfactory evidence of *their* exposition of the national compact. They have sanctioned, by the whole tenor of their opinions and conduct, the great truths for which I have contended, that the Framers of the Constitution desired, if possible, to construct so practical and complete a Government, as to render any recurrence to first principles, to revolutionary measures, unnecessary : that they established the scheme of *amendments*, through the medium of conventions, as the wise, safe, efficient remedy for doubts, defects and difficulties, otherwise unprovided for ; that they regarded the conduct of elective officers, as the appropriate subject of popular opinion, and secured the power to remove them, at an appointed time, but not before, to the people ; that they regarded *abuse and usurpation of power*, by the Union, or its Officers, by the States, or their Officers, as instances of *ordinary* breach of duty, and provided a remedy for them, by Impeachment, and by the administration of justice ; that the question, what power is to be *added*, if there be too *little*, or what shall be *taken away*, if there be too *much*, is a proper subject for *amendment*, where the point is agreed upon, or, if disputed, has been decided by the National Tribunal, in the last resort ; that the question, how their elective Officers have pleased them, is to be decided by the people ; that the question, *what power* is *granted* to the Agents of the people, or taken from the States, by the Constitution, is within the jurisdiction of the Supreme Court. But they neither intended to acknowledge, nor did they reserve, in letter or in spirit, expressly or by implication, any authority to a *State*, as represented by its People, its Legislature, its Executive, or its Judiciary, or even by a Convention of the State, to *sit in judg-*

ment on the constitutionality of the measures of Congress, of the President, or of any other Officer of the Union. The people have the constitutional power to petition (1st amendment*) for a redress of grievances; the Legislature of a State may propose an amendment to the Constitution, or may, if so proposed by Congress, consider, adopt, or reject one; the Governor may give to the Legislature of a State, information of what he may conceive to be a violation of the Constitution, with a view to the exercise of the power of Amendment, or with a view to the Constitutional mode of trying the question in a Court;† and the Legislature can take measures to carry this last, as well as the former, into effect; the State Judiciary may decide, in the first instance, that a law of Congress, or an act of the Officers of the General Government, is unconstitutional, subject, however, to revision, by the Supreme Court of the Union. These are the constitutional powers of the States in relation to the General Goverment; but, beyond this, they cannot lawfully go. What is to be understood by the Sovereign authority of a State; and what this State can possibly do, in the present crisis, on the faith of Sovereign authority, shall be hereafter considered.

I have thus far endeavored to prove the importance and authority of cotemporaneous and continued expositions of the Constitution: to show you, that according to the true theory both of the State and National Constitutions, illustrated and settled by a practice of forty years, the jurisdiction over constitutional questions is vested in the courts of justice; and to demonstrate as the judgment of this country, that the Supreme Court of the Union, is the appointed tribunal to decide on the constitutionality of Acts done under or against the authority of the Union. To that Court belongs then THE GREAT QUESTION, "*Is the Tariff Act of 1828 Constitutional?*" This memorable Law has been called, in bold language, a fraud upon the Constitution. If so, it is an abuse of *constitutional* (not an *usurpation* of *ungranted*)

* See Note I. † See Note K.

power, from corrupt, or other improper motives, and can be remedied only by the petitions of the People, or through the ballot box. *The People only* can sit in judgment on the *motives* of their *Representatives*, and on the *wisdom* and *expediency* of their *measures*. They may discard the honest servant, because they think him incapable ; the capable, because they think him dishonest ; the man of talents, because they differ from him in the right use of his talents ; the wise and good man, because his views of national and state policy are not in accordance with their wishes or judgment. But the question, whether an Act of Congress be constitutional or not, can be settled only by the Supreme Court, if the object be to declare the Law a NULLITY, *because it is repugnant to the Constitution*. To *amend* the Constitution in that particular, whatever the motive may be, would not decide the question ; because an amendment is not in the nature of a *judgment*, *annulling* an act done in pursuance of a power ; but, admits a power to exist or not to exist, and simply takes away or modifies what is admitted to *exist*, or gives that, which is admitted, *not to exist*. Neither is a *repeal*, in the nature of a *judgment*, declaring an act a *nullity*, *because unconstitutional ;* for the power to repeal implies an *existing*, *operative* law, *constitutionally* enacted, however inexpedient or unjust. If the law be conceded to be unconstitutional, it does not exist ; and you cannot *repeal* that which does *not* exist.* Neither can a petition of the people (1st. amendt.) for a redress of grievances, presented to Congress, look to any other remedy, than amendment or repeal.

But two questions will be asked, with a view to a trial in the Supreme Court. First, does it become a sovereign state to submit a question respecting her sovereign rights to that Court ? And secondly, how can the question be brought before that Tribunal ?

As to the first question, I have often heard it asserted, that the Tariff Act of 1828, invaded the sovereign rights of

* See Note L.

South Carolina, but I have hitherto sought in vain for any proof. It does not interfere with her Executive, Legislative or Judicial Departments, it does not affect her right to lay taxes, to regulate property, to create corporations, or to do any one of the hundreds of lawful acts, which she has been doing, for the last forty years. Does it prevent her from protecting and encouraging agriculture or manufactures, arts and sciences, or from legislating on any subjects of local, domestic policy? Does it vest in the officers or courts of the Union in South Carolina any power, which they have not exercised from the formation of the Government? Does it subject the citizen in South Carolina to liabilities or burthens, to which he has not been subject from the organization of the Government? Does it affect any reserved right of the State; if so the enquiry has been hitherto fruitless, to discover which one it is.

Still, however, it will be said, that it does not become South Carolina to submit the decision of the question to the Supreme Court.* Is it because she would be dishonored? Assuredly if New York, and Pennsylvania, and Maryland, and Virginia, and other States have not been dishonored, by having *their* opinions on constitutional questions, tested by that Tribunal, South Carolina cannot think it any indignity to her. As each State in succession has appeared before those Judges of the Nation's appointment, the rest of the Union has not felt that their sister State was disgraced. In every other than in her own case, South Carolina has not considered a State disgraced, and she cannot have so little magnanimity, so little conscious rectitude, as to believe, now, that she in her turn is to appear, that she is submitting to any humiliation. If the Congress and the President of the Union, if the Legislatures and Executives and Judiciaries of so many States, have not felt insulted by the thought, South Carolina, if she respects herself or her sister States, and the public opinion of the nation, or of the Tribunal of

* See Note M.

sister States, cannot apprehend, for she must know, that there is not any indignity in such an act.

Nor has she a just ground of exception, as far as the constitution and character of the Supreme Court are concerned. It is emphatically a Court of the whole People, and of every State, of the Government of the Union, and of the Government of every State. It is as independent of the President and Congress, as of the Governor and Legislature of South Carolina. Its members are selected from different States, and its bar gathers within its bounds the talents and learning, the courage, virtues and patriotism of the East and the West, of the North and the South. For wisdom, learning and abilities, for integrity and independence, for dignity and simplicity, for purity honor and propriety, they have never been rivalled. The passions and prejudices that have made war against them, the envy, disappointment and selfishness, which have assailed them, the talents and learning, the political and personal influence that have resisted them, the party violence and sectional feelings, which have risen up for their destruction, have only served to brighten their reputation, to endear them to their country, and to make them the pride and honor, as they have been the good genius of these United States. The wise and peaceful Spirit of the Hall of Justice, has taken the place of the insatiable sword, of the cruelty and violence of war, and of the arrogance and ambition of the warrior. How honorable to this Tribunal is the fact, that only one of their various members (21 in number*) has been impeached in forty years, and it is believed, that no intelligent, dispassionate man, who values the character of his country, for impartiality and justice, can read the trial of Judge Chase, without mortification. Equally honorable is it to this Tribunal, that they have never been suspected of yielding to bribery and corruption, to favor or affection, to local influence and sectional prejudices. The charge on the contrary is that they are too national: and this is precisely the charge, that a dis-

* See Note N.

contented State would make, and that the rest of the Union would disregard. So. Carolina considered it groundless, when advanced by Virginia, or Maryland, by Georgia, Kentucky or Ohio. And surely if she loves consistency and values her own dignity, she will not be the author of a charge, which she herself has heretofore condemned, and which she well knows the great majority of the Union will disregard now, as they always have. No one, indeed, can possibly read the judgments of this tribunal, equally beneficent and illustrious, and not be deeply impressed with its wisdom and learning, its moral courage and justice, its high sense of duty, its love of peace and order, its independence, dignity and patriotism. Who can read the opinions in Georgia *vs.* Brailsford, and Chisolm *vs.* Georgia, in Vanhorne *vs.* Dorrance, in Ware *vs.* Hylton, in U. S. *vs.* Burr, in Fletcher *vs.* Peck, in Pawlett *vs.* Clark, in Martin *vs.* Hunter, in Sturgis *vs.* Crowninshield, in M'Culloch *vs.* Maryland, in Dartmouth College *vs.* Woodward, in Green *vs.* Biddle, in the Society for Prop. the Gos. in For. Parts *vs.* Wheeler, in Gibbon *vs.* Ogden, in Osborn *vs.* the B. U. S. in Marbury *vs.* Madison, in United States *vs.* Peters, in Cohens *vs.* Virginia, in Martin *vs.* Mott, in Ogden *vs.* Saunders, in Brown *vs.* Maryland, in the American Ins. Cy. *vs.* Canter, without the deepest reverence, and the highest admiration, for the Judges of the Supreme Court, as, in an eminent degree, Patriots and Statesmen, as well as Lawyers and Judges.* What have we to fear from men, who have twice had the courage to say to the Congress of 1789, that they had misconstrued the Constitution (almost of their own making); who protected an obscure Justice of the Peace, against the unconstitutional act of the most powerful and popular of all our Presidents, Thomas Jefferson; and who condemned his favorite Secretary, James Madison, for obedience to his instructions; who dared to shield Aaron Burr, and his alledged accomplices, Bollman and Swartwout, against the suspicions, the apprehensions and the odium of the Admi-

* See Note O.

nistration and the People ; who shrunk not in the day of trial, but decided fearlessly and frankly, yet respectfully and calmly, against New-York and Virginia, Pennsylvania, Kentucky and Ohio, the most powerful and influential States in the Union; who distributed justice with the same independence and impartiality, to the helpless alien and the mighty Napoleon, to the humble citizen and the Corporation, to public Officers, and to States. Neither awed by power, nor influenced by patronage ; not seduced by talents and learning, nor corrupted by wealth ; serene, courteous and dignified, amidst intimidation and calumny, they have never forgotten what was due to their own honor and usefulness, or to the character of their country. From such a Tribunal, South-Carolina cannot, will not, say, that she expects aught but justice. She knows that she will receive its full measure, and more she neither asks, nor would receive.

But still the enquiry remains, how can the question be tried ? I answer, precisely in the same manner, that the constitutionality of the Embargo, of the Bank Act, of the Mandamus Act, of the Appeal System for revising the Judgments of State Courts, &c. &c. has been already tried. Let a merchant refuse to pay the duties under the Act of 1828, and bring an action against the Collector for unlawfully withholding his goods, or let him give the customary bond, but refuse to pay it, and when sued, deny its validity. In either form, the question will arise. And here, we behold another familiar illustration of what has been already insisted on, that we can scarcely conceive any form, in which the Sovereign authority of the Union or of the States can be exercised, without affecting the life, liberty or property of the citizen, in such manner, as to produce a case in Court, in which the constitutionality of the act can be tried. If the question be one of *power*, it is a question of *Constitutional Law*, to be determined by the *Supreme Court ;* but if it be a question of *expediency* as to the *measure*, or of *fidelity* or *capacity* as to the *men*, by whom it was adopted, it is then a question of *political economy*, and must be decided by the

People, through their elective franchise. His Excellency has recommended this safe and peaceful course, in preference to any of the wild or violent expedients, that have been offered, from time to time. This advice is that of a discreet, and sober minded Patriot, a friend to his country by birth, and to his country by union.

Let us now proceed to examine the Constitutionality of the Tariff; not indeed as an *original* question of *interpretation*, to be settled by an elaborate survey of the history, structure and objects of the National Government, and by a careful, judicious, minute and comprehensive examination and comparison of all the various parts of the Constitution; but as a question of *fact*, to be settled by the authority of precedents, not resting on the opinions of the foolish and ignorant, but of men, preeminent for wisdom and knowledge; not on the acts of unauthorised individuals, but of the appropriate National functionaries; not on doubtful evidence, but on the clearest; not on one or two, but on repeated declarations and measures; not on events, done in a corner, but openly, notoriously, before the whole nation; not on expositions, thought of years after the date of the Constitution, but cotemporaneous and continued.

Before, however, I enter on this part of my subject, let me pause and enquire, whether the Tariff Act of 1828, be a *palpable* breach of the Constitution. If it be such, surely it must be so, according to the proper meaning and force of the word *palpable*. Will any man, who values himself on candor and good sense, call that a palpable violation, which he must admit has been maintained, both in public and private, by very many of the ablest and most excellent men of every State in the Union. That is palpable, which is obvious, plain, manifest, undeniable. Is that then palpable, which has been the subject of fair, intelligent, honest difference of opinion, ever since the controversy arose? and such has been the fact as to the Tariff Act. A palpable breach is one, which cannot be stated to any impartial intelligent man, without his at once seeing the truth of the position, whether he were an alien, or a citizen. Let

Congress procure *twenty* miles square, for exclusive jurisdiction; let them regulate descents or administrations in a State; let them lay direct taxes, according to the rule of uniformity, and others according to that of apportionment; let them sieze on sites in particular States for forts, without a cession; let them appoint militia officers; let them establish other than a uniform rule of naturalization and bankruptcy; let them appropriate money for the army, longer than for *two* years; let them pass a bill of attainder, or an ex post facto law; let them lay duties on exports, and give a preference to the ports of one State, over those of another. In all such cases, no one could possibly doubt; for the breach would be palpable. But is there any parallel between such instances, and the Tariff? If there be, it belongs to some scheme of grammar and criticism, of definition and interpretation, to which the people of this country are, and, I trust, ever will be strangers. To follow it, can only bring upon us contempt and ridicule, not to say degradation and misery. The Tariff then is not a *palpable* breach of the Constitution: and if it be not such, then it is a fair subject, as a question of *construction*, for reason and argument, and for honest difference of opinion. As then it is a question for discussion, shall it be examined in a manly, temperate, candid spirit, or with violence and prejudice, with narrow-minded jealousy and suspicions? If we were to grant that the Tariff Act of 1828, arose from the corrupt influence of the manufacturers, and from the vile intrigues of the two Presidential parties, bidding against each other, still we should not be justified in treating a great constitutional question, otherwise than became the magnitude of the subject, and our own dignity. We owe it to ourselves, our sister States, to the People of the whole Union, and the people of each State, to the noble example of the Fathers of the Revolution, and to that example, for good or for evil, for honor or dishonor, which we must bequeathe to posterity, to speak and act only as becomes Patriots and Statesmen. The true Patriot and Statesman is grave, dignified, calm, respectful, equally free from levity and ca-

price, from passion and prejudice. Let us then examine this question, as becomes the subject, our country, and ourselves.

Many intelligent men have doubted, whether the power to protect Domestic Manufactures is to be gathered from the Constitution; while many have absolutely denied, that it can be. Assuredly, however, it must be admitted in candor, that there is no prohibition in the Constitution, like those respecting Congress and the States. A. 1. § 9, 10. It is also granted, that there is no express delegation of the power, as in the case of laying taxes, declaring war, providing a navy. It is then a fair question, whether the power to protect and encourage Domestic Manufactures is involved in any other power. For myself, I have no doubt, if it were submitted, with the history of our country, and the Constitution, to an intelligent Foreigner, (Sir James M'Intosh or Mr. Brougham, for example) he would pronounce a decisive opinion, in favor of the Protective system, as existing inseparably and necessarily, under the powers to lay duties and to regulate commerce. Let us then see what has been the course of events on this subject: and I err exceedingly, if we do not gather from them, the clearest and most satisfactory proof, that a cotemporaneous exposition, forty years ago, acted upon, time after time, has settled the construction.

And here the question arises, what is to be understood by cotemporaneous exposition. I answer, the *official opinions* and *acts* of those, who *administered* the Government. If they were among the number of those, who framed the Constitution, their *opinions* and *acts* are worth so much the more, not because they are tests of the particular sentiments, which *they themselves* may have entertained, but because they are the results of the concentrated opinions of the body, as to the properties and powers, the structure and operation of the system. There are some who rely, as on a species of sacred book, on Yates' Debates, and on the drafts of Constitutions, submitted to the Convention. I value these but little, because they contain no sufficient evidence as to

the motives and reasons, and, above all, because they were not before the public at the time. Who can pretend to assign the causes for each particular addition or retrenchment, or alteration? Was a particular clause struck out, because the *general independent* power was not intended to be given, and so much of it, as was judged desirable, was already conferred as incidental to and inseparable from other powers: or was it omitted because no part of the power was to be vested in Congress? No one, in my judgment, can venture to answer the question with confidence. I believe, as the result of a careful consideration of the subject, that the first is the correct view of the rejection of the proposal, to vest in Congress the *general independent* powers, to emit bills of credit, to appoint a treasurer, to establish military roads, to create corporations, to encourage manufactures, &c. &c. But, whatever the reasons may have been, they cannot be considered among those, which influenced the People at large, because they had no opportunity of seeing them. They can never, therefore, be regarded as cotemporaneous exposition; which consists essentially of the *opinions* held, and the *acts* done, pursuant thereto, by the public servants, appointed to execute the powers of Government. No one would pretend, in the construction of a treaty, that the private conferences of the Ambassadors were to furnish rules of decision: nor, in the enquiry, what was the original meaning of a Law, would any one offer the opinions of the committee, who prepared it. Let the treaty be ratified and acted upon: let the law be passed and reduced to practice: and *then*, *for the first time*, you have cotemporaneous exposition: such as the Nations in the first, and the People and their Public Officers, in the second instance, must respect, as a rule for their government. Now, what was the Convention, but a Committee to draft the GREAT CONSTITUTIONAL LAW OF THE UNION. That Law was adopted, and the proper Officers appointed forthwith to execute its provisions. Let us now look at *their acts*, and illustrate those acts by *their opinions*, in the fulfilment of the duty allotted to them. If *these* contradict *those*, no

one, it is presumed, will question, that *these* must yield to *those*. If on the other hand, they harmonize, it is equally taken for granted, that the latter will explain and enforce the former.

Before I proceed to the origin and history of the Tariff system, I must be excused for premising a few observations, in my judgment, indispensable to a right understanding of the subject. Congress has power to lay duties and to regulate trade.* This must be done, not blindly and carelessly, but in the exercise of an instructed, and enlarged discretion. Must not the first enquiry then be, what is the actual state of commerce, with respect to the shipping interest, and all the various trades connected with it, as to their materials and tools: with respect to the raw materials, or other productions of the earth, imported from abroad, in their relation to the agriculture of the country: and with respect to foreign manufactured articles, brought from abroad, in their relation to domestic manufactures of the same description? If this was indispensable, in laying the foundations of the systems of regulating commerce and laying duties, the same necessity and obligation have existed ever since, and must continue to exist, as long as these powers and their appropriate objects shall remain. Nor is it sufficient to be acquainted with the *actual* state of things. The wise and considerate Legislator knows, that he must not only be master of the *present* condition, but, as far as practicable, he must understand the *prospects* of agriculture, commerce and manufactures, in their relations at home and abroad. The revenue system and the regulation of trade, must vary continually, with the changes at home and abroad, in the materials and instruments of agriculture, manufactures and commerce. Let us take an illustration from the staple of the South. Would Congress act wisely to repeal the duty on foreign Cottons, and admit them to a free competition with our own, in the domestic market? To do it, without considering its effect on the Cotton interest, as well

* See Note P.

as on the Manufacturer, would be worse than folly: it would be unjust and unwise. Congress must then levy the duty, so as to benefit both, if practicable, but if not, then so as to benefit that branch of business, which can least afford to be injured. If, notwithstanding the present impost on foreign Cottons,* they should at a future day, threaten to undersell the Cotton Planter in the domestic market, Congress would not do their duty to the country, if they were not to adapt the revenue system to the protection of the Planter, even though his constitutional scruples should seal his lips. The power thus to protect, and thus to change the system, on the very ground of the justice and expediency of the protection, as a national measure, must exist in every government; and happily for us, the first founders of our scheme of commerce and revenue, have left on record, undoubted testimony of their understanding on this subject. If these principles be correct, it follows, that the *degree*, in which the *objects*, on which the power is to be exercised, the *time*, when changes shall be made, and their *extent*, are exclusively matters of *legislative discretion*. If this has been exercised ignorantly, or oppressively, or corruptly, the only constitutional remedies are amendment, modified repeal, or the removal of such incompetent or faithless servants, at the next election.

Let us now commence our survey. The first important fact to be noticed, is the large number of the members of the Convention, who were in the first Congress, and in the Judicial and Executive Departments of the New Government. George Washington, the President of the Convention, was the 1st President, under the new Constitution. Alexander Hamilton, was his Secretary of the Treasury, and Edmund Randolph, his Attorney General. William Patterson, James Wilson, and John Blair, were appointed Judges. In the Senate were John Langdon, Caleb Strong, William Samuel Johnson, Oliver Elsworth, William Patterson, Robert Morris, George Read, Richard Bassett, Pierce

* See Note Q.

Butler, and William Few, ten in number. In the House of Representatives, were Nicholas Gilman, Elbridge Gerry, Roger Sherman, George Clymer, Thomas Fitzsimmons, Daniel Carroll, James Madison and Abraham Baldwin, eight in number. The Ten Senators were from *seven* States, and the eight Representatives from *eight:* a majority of the *eleven* States then forming the Union; for North-Carolina did not accept the Constitution till 21st Nov. 1789, and Rhode Island not till 29th May, 1790. Need I add to this list the names of John Adams, as Vice President, of Thomas Jefferson, as Secretary of State, of John Jay, as Chief Justice, of Richard Henry Lee, Wm. Grayson, and Charles Carroll, as Senators, and of Fisher Ames, Egbert Benson, Elias Boudinot, Wm. Loughton Smith, and doubtless many others, whose characters are not sufficiently known to me, as members of the House of Representatives? Can we ever hope from the government of the Union, for a sound, safe, practical construction of the Constitution, on any point, if not from such men as composed the Legislative, Executive, and Judicial Departments, in 1789? And is it possible that any State, whether acting through a Legislature or Convention, could judge it to be wise, to call in question their decision, pronounced forty years ago, repeatedly acted on, and not questioned for more than thirty years. Such conduct can never be the dictate of wisdom and duty, or of a safe and discreet policy.

It is to be remembered, that prior to the establishment of the Constitution, the whole country was divided between the Federal and Antifederal parties, the former contending for a liberal grant of power to the General Government, the latter insisting, that the Union should be almost entirely dependent on the States. The *former* was the *National*, the *latter* the *State* party of that day. The small majorities, which accepted the Constitution in many of the States, the violent opposition, which it met with from men of the first talents and character, the formidable minorities, who resisted it almost every where, show that a most respectable portion of the community, in point of numbers, abilities,

experience, and influence, were hostile to the instrument; because they regarded it as *the enemy of State* rights. The vast number of amendments proposed by the States, show how exceedingly distrustful great numbers were of the General Government, and that *the dread of dismemberment rather than a settled decisive love for the instrument*, was a chief cause of its acceptance. Such was the state of things, that in the language of Washington, "It was, a long time doubtful, whether we were to survive *as an Independent Republic*, or decline from our federal dignity, into *insignificant and wretched fragments* of empire."* It was impossible then for the new Government not to be watched, with the utmost anxiety by its friends, and the utmost jealousy by its enemies, in and out of Congress.

Let us now look at the actual course of events in the 1st, 2d and 3d Sessions of the First Congress, and we shall see abundant proof, that all the elements of a firm, enlightened, able opposition existed, and were called forth into action, on some most important occasions. The House of Representatives formed a quorum 1st April, 1789, and the Senate 6th April. The bill to establish the Department of Foreign Affairs, gave rise, in the House of Representatives, to a very animated and able debate, on the constitutional power of the President to remove Executive Officers at pleasure. On the bill establishing the Treasury Department, a spirited and zealous controversy took place, on the alleged ground, that to permit the Secretary of the Treasury to digest and report plans, was *a dangerous innovation on the Constitutional privileges of the House of Representatives.* On the question, how the President and Vice President should be addressed, the two Houses differed. A warm debate ensued in the House of Representatives, which ended in a Committee of Conference, who could not agree. It was in 1789, that twelve amendments, gathered out of the mass proposed by the States, were after much consideration, offered to the States by Congress. At the 2d Session of

* 5 Marsh. Wash. 130, 132, 3, 137, 8, 208. And See Note R.

the 1st Congress in January, 1790, the following topics were discussed, with a zeal and perseverance, an ability and eloquence, that proved the watchfulness and skill of the opposition. The first subject debated was the appropriation of permanent funds for the payment of the revolutionary domestic debts : the next was the question, whether the public creditor should be paid the whole debt on its face, or only the depreciated value ; thirdly, whether, if they paid the whole, Congress ought not to discriminate, by paying the holder, only what he *had* actually paid, and giving the balance to the original owner ; but there was one subject, which seemed, in the language of the Historian of Washington's Administration, "to unchain all those fierce passions, which a high respect for the government, and for those who administered it, had in a great measure restrained" 5 Marsh. Wash. 244. It was the proposition to assume and fund the *State* debts, in common with those of the *Union*. The *Constitutional* authority of Congress to do so was questioned: as also the justice and expediency of the measure. The proposition to render the debt *irredeemable*, was also violently opposed. In the third Session (which began Dec. 1790) some important matters came up. The first was the proposed tax on distilled spirits, which was vehemently opposed ; and the next, the old National Bank, the constitutional power of Congress to charter which was denied by Mr. Madison, Mr. Giles, and others. The President consulted his Cabinet on the question ; and though Jefferson and Randolph were against it, Washington adopted and ratified the unanswered and unanswerable argument of Alexander Hamilton.

No man, after reviewing the labors of that Congress, the nature of the questions considered, the grounds of opposition, and the distinguished abilities enlisted, can believe, that they could have suffered a *palpable* breach of the Constitution to pass unnoticed. No man can believe, that any assumption of power, favorable to the General Government and unfavorable to the States, could have been tolerated. No man will dare to say, that that Congress was not emi-

nently fitted, to interpret the Constitution. With this knowledge, then, of that Congress, we must say, (if we knew nothing of the first Tariff Law, but the act itself) that they had such motives and opportunities, and such knowledge, experience and capacity, as must place *their* construction on higher and more solid ground, than could be occupied by the *unanimous* opinion, if it existed, of *all* the intelligent men in the Union, at *this* day, to the contrary.

Let us come then to the proceedings of that Congress, as to the protective system. It is a fact, about which there can be no dispute, that manufacturers of various kinds actually existed, before the year 1789, in the United States. For proof of this, I refer to Alexander Hamilton's Report on Manufactures, p. 209, wherein he states the various manufactures then existing, viz. of skins, iron, wood, flax and hemp; bricks, tiles and potter's ware; ardent spirits and malt liquors; paper, pasteboard, and paper hangings; hats; stuff and silk shoes; refined sugars; oils, soap and candles; copper and brass wares; tin wares; carriages; snuff, chewing and smoking tobacco; starch and hair powder; lampblack and other painters' colors, and gunpowder. I refer also to the Journal of the Senate of 1789, whereby it appears, that the Shipwrights of South-Carolina, (p. 38) and those of Baltimore and Philadelphia, (p. 46, 47) petitioned; those of Baltimore and Philadelphia praying "that such *restrictions* might take place, as to effect a revival of their branch of business." The traders and *manufacturers* of Baltimore, the *manufacturers* of Boston, and *those* of New-York also petitioned, these last, praying, that such regulations and *restrictions* may be adopted, in relation to the *importation* of *foreign* articles, as may *encourage home manufactures*, p. 47. The Distillers of Philadelphia also petitioned, and John M'Lellen, on behalf of the merchants and traders of Portland, prayed, that the duty on molasses might be abolished or greatly reduced. I now refer to the Journal of the House of Representatives: The tradesmen, manufacturers, and others of Baltimore, prayed "an imposition of such duties on *foreign* articles *which can be made in America*,

as will give a just and *decided preference* to the labors of the Petitioners." p. 14. The mechanics and manufacturers of New-York said, "They look with confidence to the operations of the *new* Government, for a restoration of both, (trade and *manufactures*) that they have both subjoined a list of *such articles* as can be *manufactured in the State of New-York*, and pray the *countenance* and attention of the National Legislature thereto." p. 20, 21. The tradesmen and manufacturers of Boston, prayed "the attention of Congress to the *encouragement of manufactures*, and the *increase of American shipping*." p. 56, 57. The Shipwrights of Charleston, p. 16, of Baltimore, p. 32, and of Philadelphia, p. 50, also prayed relief, and for the advancement and increase of American shipping. The traders of Portland prayed relief as to the duty on molasses, p. 42, because it would produce "*pernicious consequences to manufacturers*." The Distillers of Philadelphia also suggested, that a *greater* difference in the duties on molasses and rum, than now proposed, would be of *advantage* to the interests of the United States." In the Senate, (Journ. p. 46) a Committee was appointed, while the second reading of the Duty Bill was going on, to consider the expediency of adding a clause, *prohibiting* the importation of goods from China or India, except in *American* ships. The *promotion* and *encouragement* of *domestic manufactures*, was then urged upon Congress, publicly and unequivocally as a *constitutional* duty, and as called for by the general good. In other words, the *Tariff* or *protective* system, as we now style it, was called for in 1789, *at the outset of the new Government*. All this went abroad, through the press, to the nation at large.

Let us now see how Congress acted. Mr. Madison introduced the Resolution for a duty on certain goods, wares and merchandize, imported into the United States. The committee of the whole took up the subject on 11th April, and on the 24th, the House entered upon it. The Bill was not passed till 2d July. p. 11. 24, 24, and 70. In the Senate, the Duty Bill, (which had come from the House of Representatives) was first taken up 18th May, and returned to

the House of Representatives 29th June. In both Houses the bill was taken up day after day, and considered and discussed step by step Mr. Madison, I have said, opened the subject, and presented "the scheme of impost, which had been recommended by the former Congress, and had been sanctioned by a majority of the States, to which he added a general proposition from himself for a duty on tonnage." 5 Marsh. Wash. 189, 190. Mr. Fitzsimmons, from Pennsylvania, moved an amendment, greatly enlarging the catalogue of enumerated articles, for the declared purpose of *encouraging* the *productions* of our country, and *protecting our infant manufactures.* p. 190. Mr. Madison accepted the amendment. p. 190. But when the details came to be considered, much difference of opinion existed. "The tax on many articles was believed to press *more heavily* on *some*, than on *others:* it was supposed also to *favor* the *products* of *particular* States, and no inconsiderable degree of watchfulness was discovered, lest those which were more populous, and whose *manufactures* were in greater progress, should lay *protecting* duties by which the *industry* of *one part* of the Union, would be *premiums* charged on the *labor* of *another.*" p. 191. Mr. Madison introduced at the same time, the duty on tonnage: and in debating this branch of the subject, "a great degree of sensibility was discovered, on the *discrimination* between the duty on American and Foreign bottoms." It was said, "that the *increased* tonnage on *foreign* bottoms, operated as a *tax* on *agriculture* and a *premium* to navigation." p 191. I do not think, said Mr. Madison in reply, that there is much weight in the objections; "but if there were, *it may be a burden of that kind, which will ultimately save us from a greater.*" p. 190. At length, the debate is closed, the bill is signed by the Speaker of the House and President of the Senate, is sent to the President, and is approved by George Washington, how interesting the circumstance, on the *Fourth* of *July*, 1789. The first act passed by the new Government was to regulate the time and manner of administering oaths: the second, was the act to lay a duty on goods, &c. and the third, the tonnage bill.

The preamble to the second, is the following : " Whereas it is necessary, for the support of Government, for the discharge of the debts of the United States, *and the encouragement and protection of manufactures*, that duties be laid on goods, wares, and merchandizes." Thus, the first act of the new Government was to bind its members by *the sanction of an oath, to observe the Constitution*, and the second act was prefaced, according to the doctrine of our day, *with a declaration, that they had violated their oaths, and broken the Constitution :* and, according to the same doctrine, (I blush for Carolina) George Washington sanctioned that violation and that breach, and recorded himself, even on the *Fourth of July, a Traitor to the Constitution ! !*

Let us concisely state the argument, deduced from the foregoing views. The want of manufactures had produced great evils during the Revolution. They arose and prospered somewhat afterwards, but had declined and suffered exceedingly under the Confederation. The manufacturers petitioned the new Government for protection and encouragement. Mr. Fitzsimmons, (a member of the Convention) offers an amendment for the express purpose of protecting our infant manufactures. Mr. Madison, (another member of the Convention) accepts the amendment. The bill is supported by them and by Mr. Baldwin and Mr. Clymer, two other members of the Convention, and also by Mr. Jackson, a co-delegate with Mr. Baldwin, from *Georgia*. Suspicions and fears are openly avowed, as to the unequal, unjust and oppressive operation of the bill, on *some* interests, in favor of *others*. The great struggle is to prevent this, by *modifications* of the duties, laid partly with an *express* view to the protection of the home manufacturer. All this passes openly in Congress, is published to the whole Union in the printed Journals and debates of the two Houses, and in the act itself. The whole Union acquiesces in it. This is a cotemporaneous exposition, made immediately after the adoption of the Constitution, by the proper departments of Government, the Legislative and Executive ; never questioned by the Judiciary ; made known to the whole Union ;

and ratified by all the people, in the only way, in which they can approve, by acquiescing. It is then a construction of the highest authority, and cannot be questioned, much less denied or resisted, if we set a right value on a stable order of things, on a consistent government, and on a settled Constitution. Nor must we forget, that the whole proceeding went on the supposition, that *the principle of protection was constitutional:* and that *no one ever doubted on that point, in or out of Congress.*

But we can add other proofs. Washington, in his Message of 8th January, 1790, says, "That their safety and interest require, that they should *promote such manufactories*, as would tend to render them *independent on others* for *essential*, particularly for military supplies." 1 vol. Am. St. Pap. p. 14. In the Report on Public Credit, (Ham. Off. Rep. p. 47, 48) of 9th January, 1790, he expressly recommends a discriminating duty, to favor spirits distilled within the United States of *domestic* materials, beyond the same, distilled in the United States from *foreign* materials; but by the act of 10th August, 1790, (2d vol. A. C. Edn. 1815, p. 176) duties were only levied on imported spirits, at rates from 12 to 25 cents per gallon, which was of course a protection to the domestic article. By the same act 10 per cent. was added after the last of Dec. on goods imported in foreign bottoms. By the Tonnage Act of 20th July, 1790, a very great differenee is made between American and Foreign ships, viz. 6 cents per ton are charged on American ships, owned by Americans, 30 on the same owned by Foreigners, and 50 cents on all others. This discrimination was a powerful stimulus to ship building, (itself a manufacture, Ham Rep. on Man. Off. Rep. p. 209) and to all the manufactures depending on it, viz. in iron, copper, hemp, paints, oil, &c. &c.

Again, when the controversy arose, as to the constitutionality of the National Bank, in 1790, Edmund Randolph, in his opinion to the President, states, among the heads of the power to regulate commerce with *foreign* nations, the power to *prohibit* their *commodities*, to impose or *increase*

the duties on them. Ham. Off. Rep. p. 133. At page 145, Hamilton states one *object* of the Laws of the United States to be the *advancement* of *our manufactures*. "What," says he on the same page, "are all the duties upon *imported* articles, amounting in some cases to *prohibition*, but so many *bounties* on *domestic* manufactures." Alexander Hamilton's Report on Manufactures, was made in pursuance of a Resolution of the House of Representatives, which referred it to the Secretary of the Treasury, to report a proper plan or plans, pursuant to the President's recommendation of 8th January, 1790, "For the *encouragement* and *support* of such *manufactories* as will tend to render the United States independent of other nations, for essential, particularly for military, supplies." Jour. H. R. 1790, p. 14. I shall not enumerate in detail, the applications of the manufacturers, at the 2d Session of the First Congress in 1790, but shall refer generally to the Journal of the House of Representatives for those of the Rope Makers of Boston, p. 45, of the Cordage Manufacturers of New-York, p. 56, of the Manufacturers of Tobacco and Snuff of New-York and Philadelphia, p. 70, of the Beverly Cotton Manufactory, p. 76, of the Mustard Manufacturers of Philadelphia, and of the Tobacco and Snuff do. of Baltimore, p. 82, of the Coach Makers of Philadelphia, p. 97. and of a Glass Manufactory in Maryland, p. 115--all claiming protection and encouragement.

In pursuance of the Resolution, the Secretary presented his Report on Manufactures, of which, it is but saying what it deserves, to pronounce it an honor to the age, and still more to the young nation, which produced it. This paper was ordered by the *popular* branch, was presented to them, was published to the whole nation, and contains in every possible variety of form, the assertion of the power of the General Government to promote and encourage Manufactures. He begins by a sentence, which leaves no doubt, that no man in his day, questioned the Constitutional power of Congress. The *expediency* of encouraging *Manufactures*, in the United States, which was not long since deemed *very*

questionable, appears at this time to be *very generally admitted.*" p. 15, Off. Rep. At page 173 he states the reasons, why manufactures "not only occasion a positive augmentation of the produce and revenue of society ; but contribute essentially to rendering them greater than they could possibly be without them." The 7th is stated at page 180 to be that manufactures "create in some instances a new, and secure in all, a more certain and steady demand for the surplus produce of the soil." At page 209 he says, "to all the arguments brought to view, the impracticability of success in manufacturing establishments, in the United States it might have been a sufficient answer to refer to what has been already done." At page 214 he shows the importance of manufactures to *commerce*. At page 224 he proceeds to enumerate the means of encouragement employed by other countries, with a view to the formation of a better judgment of the means proper to be resorted to by the United States. The 1st are "*protecting* duties, on those *foreign* articles, which are the *rivals* of the *domestic* ones, intended to be *encouraged*. p. 224. This species of encouragement is sanctioned *by the laws of the United States* in a *variety* of instances. p. 224. The 2d are *prohibitiins* of *rival* articles, of which, "there are examples in the Laws of the United States." p. 225. The 3d are prohibiting the exportation of materials. The 4th, pecuniary bounties. At page 230, he states that a question has been made as to the *Constitutional* power of Congress to employ *this particular means*, viz, *bounties;* but he had certainly never heard of any such objection to the *duty* system. The 5th are premiums. The 6th, the exemption of the materials of manufactures, of which there are instances in the laws of the Union. p. 233. The 7th, drawbacks of the duties, imposed on the materials of manufactures, of which the Laws of the United States afford instances. The 8th, the encouragement of new inventions and discoveries, &c. p. 235. The 9th, judicious regulations for the inspection of manufactures. The 10th, facilitating pecuniary remittances from place to place. The 11th facilitating the transportation of commodities. He proceeds to

consider the various classes of manufactures, which merited or required encouragement, (p. 243 to p. 269) and which I have already noticed (page 58). At page 271, he considers the objection "of a diminution of the revenue," and answers, that "the interests of the revenue are promoted, by whatever promotes an increase of national industry and wealth."

It is impossible for any one to read this admirable Report, and not be satisfied, that Hamilton, in his day, never heard a suspicion of *unconstitutionality* against the *protective* system, except as to a single item of *means*, viz. *bounties;* and if *he* had not heard of it, surely it is a fair conclusion that Congress had not, and if they had not, the country at large had not. Certain it is, that among the great number of distinguished men, then in the public councils, in the Executive and Legislative Departments, (of whom 21 had been members of the Convention,) *not one doubted on the subject.* We accordingly find that *the whole Government agreed in their official declarations and acts, founded on the principle, that to protect and encourage manufactures, under the powers to regulate commerce and to lay imposts, was the* UNDOUBTED RIGHT *and duty of Congress.* And yet, it is *such men, unquestionably fit, honest and vigilant,* whom Carolina now stands forth, before her sister States, to brand *as ignorant, incapable and faithless.* If she has no regard for the great and good men of other States, does she remember, that she passes this unjust and cruel judgment, on her own Senators, Pierce Butler and Ralph Izard, and on her own Representatives, Thomas Tudor Tucker, William L. Smith, Œdanus Burke,* Thomas Sumpter and Daniel Huger? Is she then to swell the list of *unnatural Parents,* of *ungrateful Republics*

I shall not trouble you with a tedious review of the succession of Acts of Congress, which have asserted in various forms this jurisdiction of the National Government † Let me rather ask your attention to a series of public documents, perhaps, as a class, the most extensively read and

* See Note S. † See Note T.

the most interesting to every American. I mean the Presidents' Messages. I have already referred to Washington's of 8th January, 1790. In the same document, he says, " I cannot forbear intimating to you, the expediency of giving *effectual encouragement*, as well to the introduction of new and useful inventions from abroad, as to the exertions of skill and genius in producing them *at home*." Pres. Mess. 1825, p. 36. In the Message of 8th Dec. 1790, he strongly recommends the ship-building interest, p. 41. In the Message of 8th Dec. 1795, he says, " Our agriculture, commerce and *manufactures* prosper beyond former example." p. 79. In the Message of 7th Dec. 1796, he says, " Congress have *repeatedly*, and not without success, directed their attention to the *encouragement of manufactures*. The object is of *too much consequence* not to ensure a *continuance* of their efforts in every way, which shall appear eligible." p. 88. John Adams, in his Message of 23d Nov. 1797, says, " Our agriculture, fisheries, arts and *manufactures* are connected with and depend upon it (commerce). The faith of society is pledged for the preservation of the rights of commercial and sea-faring, no less than of the other citizens." p. 137. Jefferson, in his Message of 8th Dec. 1801, says, " Agriculture, *manufactures*, commerce and navigation, the four pillars of our national prosperity, are the most thriving, when left most free to individual enterprize. *Protection* from *casual* embarrassment, however, may sometimes be seasonably interposed." p. 175. In his Message of 15th Dec. 1802, he states that " to *protect* the *manufactures* adapted to our circumstances, is one of the *landmarks*, by which we are to guide ourselves *in all our proceedings*." p. 184--5. In his Message of 8th Nov. 1804, he speaks of the " broader view of the field of Legislation," to be taken by Congress; and states, as one of their enquiries, " Whether the great interests of agriculture, manufactures, commerce, or navigation, can, within the pale of your constitutional powers, be aided in any of their relations." p. 200. In his inaugural address of 4th March, 1805, in speaking of the surplus income, which he

calculated on, after paying the public debt, he suggests the idea, that it may, by a just *repartition among the States*, and a corresponding amendment of the Constitution, be applied, in time of peace, to rivers, canals, roads, arts, manufactures, education, and other great objects, *within each State.*" p. 203. In his Message of 2d Dec. 1806, speaking of the same surplus, he speaks of their application to the great purposes of the public education, roads, rivers, canals, and such other objects of public improvement, as it may be thought proper to add to the constitutional enumeration of federal powers." p. 227. The same idea is repeated in his message of 27th Oct. 1807, at page 237, but without any enumeration of particulars. In his Message of 8th Nov. 1808, he removes whatever doubt may have attached to the *four last* extracts. Speaking of the suspension of foreign commerce, and the consequent losses and sacrifices of our citizens, having driven a portion of capital and industry to internal manufactures and improvements, he says " The extent of this conversion is *daily increasing*, and little doubt remains that the establishments *formed and forming*, will, under the auspices of cheaper materials and subsistence, the freedom of labor from taxation with us, and of *protecting duties and prohibitions*, become *permanent*. p. 246. Madison, in his inaugural address 4th March, 1809, speaks of *promoting*, by *authorized* means, improvements friendly to agriculture, to *manufactures*, &c. p. 252. In his Message of 23d May, 1809, he says to Congress, " It will be worthy of their just and provident care, to make such *farther* alterations in the laws, as will *more especially protect and foster* the several branches of *manufactures*, which have been recently instituted or extended." p. 256. In his Message of 29th Nov. 1809, he rejoices that the extension of *manufactures* is *diminishing* our dependence on *foreign* supplies. p. 264. In his Message of 5th Dec. 1805, he speaks of " the highly interesting extension of useful Manufactures. How far it may be *expedient* to guard the infancy of this improvement in the distribution of labor, *by regulation of the Commercial Tariff*, is a subject, which cannot fail to suggest it-

self to your patriotic reflections." p. 269, 270. In his Message of 5th Nov. 1811, he says, "A portion of your deliberations cannot but be well bestowed on the *just and sound policy of securing* to our *manufacturers* the success they have attained." p. 281. In his Message of 7th Dec. 1813, he rejoices that the war had cherished and multiplied our manufactures, so as to make us independent of all other countries, for the more essential branches, for which we ought to be dependent on none." p. 311. In his Message of 20th Sept. 1814, speaking of the enemy, he says, "In his pride of maritime dominion, and in his thirst of commercial monopoly, he strikes with peculiar animosity at the progress of our navigation and manufactures." p. 319. In his Message of 18th Feb. 1815, he says, "There is no subject which can enter with greater force and merit into the deliberations of Congress, than a consideration of the *means* to *preserve* and *promote* the *manufactures*, which have sprung into existence, and attained an unparalleled maturity, throughout the United States, during the period of the European wars. *This* source of national independence and wealth, I anxiously recommend, therefore, to the *prompt and constant guardianship of Congress.*" p. 323. In his Message of 5th Dec. 1815, he bestows a page on the subject, and says, "In adjusting the duties on imports to the object of revenue, *the influence of the Tariff on Manufactures*, will necessarily present itself for consideration." p. 331. He then speaks of the "protection due to the enterprising citizens, whose interests are at stake," of "selecting the branches more especially entitled to the public patronage," and says, "it will be an additional recommendation of *particular manufactures*, where the materials are extensively drawn from *our agriculture.*" p. 382. In his Message of 3d Dec. 1816, he regrets the "*depression* experienced by *particular* branches of our *manufactures*," and says, "the evil will not, however, be viewed by Congress, without a recollection, that *manufacturing*, if allowed to *sink too low*, or *languish too long*, may not *revive* after the causes shall have *ceased.*" p. 336—7. In the inaugural address of President Monroe on 4th March, 1817,

he says, "our *manufactures* find a generous *encouragement* by the policy which patronizes *domestic* industry." p. 352. "Our *manufactures* will likewise require the *systematic* and *fostering* care of the Government." p. 355. In his Message of 2d December, 1817, he says, "Our *manufactories* will require the *continued* attention of Congress." p. 372. In his Message of 17th November, 1818, he says that the strict execution of the revenue laws "has, it is presumed, secured to *domestic manufactures* all the relief, which can be derived from the *duties*, that have been imposed upon *foreign* merchandize, *for their protection*." And he goes on to say, "the expediency of granting *further protection* is submitted to your consideration." p. 387. In the Message of 7th Dec. 1819, he says, "It is deemed of great importance to give *encouragement* to our *domestic manufactures*:" and again proceeds to say, how far it may be practicable, "to afford them *farther encouragement*, paying due regard to the other great interests of the nation, is submitted to the wisdom of Congress." p. 405. In his Inaugural Address of 4th March, 1821, he says, "I am satisfied that internal duties and excises, with corresponding imposts on *foreign* articles of the *same* kind, would, without imposing any serious burthens on the People, enhance the price of produce, *promote our manufactures*, and augment the revenue, at the same time, that they would make it more permanent." p. 431. In his Message of 3d December, 1821, he speaks of the policy, which required the Government to refuse a compliance with the demands of France, because the effect would be "to give extraordinary encouragement to *her manufactures* and productions, in the ports of the United States." p. 441. He also says, "it may be fairly presumed, that under the *protection* given to *domestic manufactures*, by the *existing laws*, we shall become, at no distant period, a *manufacturing country*, on an *extensive* scale." p. 452. "It is thought that the revenue may receive an *augmentation* from the existing sources, and in a manner, to *aid* our *manufactures*." "It is believed that a moderate *additional duty*, on certain articles would have that effect, without being liable

to any serious objection." p. 454. In his Message of 3d December, 1822, he says, "from the best information that I have been able to obtain, it appears that *our manufactures*, though depressed immediately after the peace, have considerably *increased*, and *are still increasing*, under the *encouragement* given them by the *Tariff of* 1816, and by *subsequent* laws." He then refers to the "strong reasons," "which impose on us the *obligation* to *cherish* and *sustain* our manufactures." p. 468. "On a full consideration of the subject, in all its relations, I am persuaded, that a *farther augmentation* may now be made of the duties on certain *foreign* articles, *in favour of our own*, and without affecting injuriously any other interest." p. 469. In his Message of 2d December, 1823, he says, that his views in the Message of 1822, "respecting the *encouragement*, which ought to be given to *our manufactures*," remain unchanged. "Under this impression I recommend a *review* of the *Tariff*, for the purpose of affording such *additional protection*, to those articles, which *we are prepared to manufacture*, or which are more immediately connected with the defence and independence of the country." p. 490.

Such is the long line of testimonies, which MANUFACTURES are able to produce, in favor of the constitutionality and expediency of encouraging them, through the REVENUE system. These testimonies are found in the most interesting, and most extensively read of all public documents. The Nation has been told, through the Presidential Messages from 1790 to 1823, that Manufactures ought to be protected and encouraged by duties laid for the purpose; and Congress has acknowledged the truth of the principle, the justice of the claim, and the wisdom of the measure, by numerous Acts, adopted with a view to this object. And yet, after repeated assertions of this right, and repeated exercises of this power, by the National Government, for more than thirty years, the Constitutional Statesmen of Carolina have discovered, that no such power was granted, or intended to be granted; and that on the contrary, it was actually withheld!! Is Carolina willing to stultify herself,

and to stultify, or condemn as unfaithful and worthless, all her distinguished men,* from 1789 to 1823; and to swell this list of unworthy and incompetent public servants, with all the eminent Patriots and Statesmen, who have administered the Executive and Legislative Departments of the National Government, during the same period of time? Let her seriously and deliberately maintain this opinion, and assert her right to act upon her judgment, against such overwhelming proofs, that she errs, and is actually self-condemned; and we give to the world an example of inconsistency and instability, of indiscretion and ingratitude, that must bring down upon us the scorn and ridicule of the Statesman, the pity and indignation of the Patriot. Disguise it as we may, we are now denying a *settled interpretation of the Constitution, and the long established authority of the National Government founded upon it*, and we are setting an example which is hostile to the solid and safe principles of interpretation, to the stability and order of our Institutions, and to the practical wisdom, sound discretion, and enlightened sense of duty, with which the Executive and Legislative Administration of the Union should ever be regarded.

The view, which I have thus presented of the Tariff scheme, justifies me (I flatter myself,) in the position, that the *constitutionality* of the *protective* system is no longer a question of *construction*; but is really, when rightly considered, merely a question of *fact*. Under this aspect, I have endeavored to exhibit it: and I trust that I have not been unsuccessful. I do indeed trust in this; because I conscientiously believe, that when this day of excitement and apprehension shall have passed away, as assuredly it must, (like its predecessors in the East and the West, in the North and the South,) Carolina will acknowledge, *that the National Government is vested with constitutional power, to protect and encourage domestic manufactures, through the medium of the revenue system*; that so to protect and encourage, that branch of industry, *is not an usurpation of power*; though, if

* See Note U.

so to do, be *impolitic*, it would be an *abuse* of *power*, or a *neglect* of *duty*: and either would be remediable *only* through the *elective* franchise.

I come now to the deeply interesting, delicate, and important question, What is State Sovereignty? In what relation do the States, as members of the Union, stand to the General Government? What redress has the State, in the existing crisis, acting on her opinion, that the Tariff of 1828, is unconstitutional?

Let us suppose a State to exist by itself, apart from and unconnected in any way with others. Such would be a Sovereign State; yet it is obvious, that the only sovereignty, which it could be considered as possessing practically, is *domestic* sovereignty. *Foreign* or *international* sovereignty could only arise out of its relations to *other* States. Let these grow up, and immediately the law of nations attaches to them, treaties, and various acts of international intercourse result from them, and the solitary State becomes a member of the family of Nations. In such a situation, the foreign or international sovereignty is called forth and developed in its full perfection. Such a State is then a Sovereign State, in the highest and most comprehensive sense of the word, enjoying all the powers and authorities, arising from its *international* constitution under the Law of *Nations*, and all those, which spring from its *local* constitution, under its *domestic* polity. Such is the foreign, and such the domestic, sovereignty of a State. The combination of both constitutes the highest order of sovereignty. Precisely in that degree, in which either is curtailed, is the one or the other species diminished, and impaired. Take either away entirely, and the results will be of immense consequence. Let the world of nations remain; but let one of them transfer the whole of its *foreign* sovereignty to another, and the result is, that *this*, in relation to the *rest* of nations, becomes the only representative of *that*; and *that ceases to be a nation*, in respect to the *rest* of nations, under the law of Nations.

Let us take an illustration from European History: When

Scotland became united to England, under the Act of Union, and the separate Kingdoms of England and Scotland became one Kingdom, under the style of the Kingdom of England, and the British King became the Representative of both, as to the *foreign* jurisdiction of Peace and War, of Treaties, of sending and receiving Ambassadors, &c. &c. the conclusion cannot be resisted, that England and Scotland *separately* disappeared from the list of nations; and that while that Union shall subsist, they must continue entirely unknown to the world of nations, *separately* considered as England and Scotland. Neither can do any act, in relation to a foreign government, nor a foreign government any, in relation to either, except through the medium of the British King, as the international Representative of both England and Scotland. Hence, each of them is totally stripped of all the jurisdiction of foreign sovereignty, and having no *persona standi* in the Court of Nations, ceases to be a nation, in the international sense of the term, the only sense known to the Law of Nations.

Let us carry our illustration a step farther. Suppose that Scotland were dissatisfied with the British Government, and chose to allege against the British King an usurpation of power, not sanctioned by the mutual compact: that all the Departments of the common Government sustained the views of the British King, who insisted that he was right, and would not yield. What redress could Scotland have? She would have two remedies, one *out of* the law of nations, and one *under* that law. The first would be to *petition* for a redress of grievances; to obtain, if she could, a *modification* of the Act of Union; to try the question, if it admitted of that form, under the compact, before a *judicial tribunal;* but if these failed her, she could have no farther redress, *out of* the law of nations: and her only remaining remedy would be to make open war against England. This might be done, either for the purpose of obtaining the desired redress, still acknowledging the Union to subsist, or for the purpose of establishing her independence, declaring the Union no longer to subsist. It is too

clear, to need either reasoning or authority, that in the *first* case, by her own admission, she could not be known to other nations, and they could view the war in no other light, than as a rebellion of a part of the nation against the nation itself, as known to them and represented solely by the King. It is equally clear, on the settled principles of public law, that, in the *second case*, other nations could only view the contest as a *civil* war, in which they had no concern, and in which they could not interfere. They could not do any act, in relation to Scotland, directly; though they might indirectly, but still through the medium of the King, as in the instance of mediation. But other nations could not recognize Scotland, or have any mutual dealings with her as a nation, except in three cases: First, where the British Government, either by force or by compact, acknowledged her independence; secondly, where Scotland had so effectually vindicated her cause, as to have successfully resisted the British power, though the contest was not closed. In this case, another nation might recognize her independence, if she could be regarded as de facto independent; but then the British Government would have a right, exercising its own discretion, to regard it as an act of unjustifiable interference, and hostility, and might declare it just cause of war. The third would be, where France for instance, should choose to interfere at the outset, and treat with Scotland as independent. That would be an act of hostility, and good ground of war to the British Government. Hence, I conclude, that Scotland, after the Union, could not be known to other nations, until she had separated, in a like peaceable manner, by *consent;* or by *force*—de jure, where the British Government acknowledged her independence; de facto, where she had substantially maintained it. If by consent, or by force, de jure, she might be regarded as a nation by another country, lawfully and without the risk of becoming a party in the war; but if by force, de facto only, that could be the result only of a fair trial of mutual strength, and even then a third power would still incur the hazard of being regarded as an enemy.

It would be in vain for Scotland to urge, that she had been once independent, and that she had reserved to herself the whole of her local legislation, and domestic sovereignty, and all the power, which she had not parted with under the compact. The answer would be, that she had retired voluntarily from the society of nations, and had constituted an international representative to take her place, de jure and de facto, among nations: that she retained nothing of her international character, and therefore was a stranger entirely unknown to nations. To them, it would be immaterial whether she had parted with all or with none of her domestic sovereignty, whether she had sunk into a province, or still continued sovereign as to all matters of internal policy. Equally immaterial would it be, what was her former, and what her present form of government. The Law of Nations could draw no distinction between the Monarchy, the Aristocracy, and the Republic. The *external* relations only could be considered. The *internal* must be disregarded.

Let us now look at the state of things in our own country. There never was a time, when the States were regarded as separate nations by other nations. The United States, even before the Articles of Confederation, were THE NATION, as to the rest of the world. The Colonies appeared before the world as thirteen separate independent States, by the Declaration of Independence; but no international act of any consequence, by virtue of the Foreign sovereignty was ever done by any one State as to European nations, or by these as to that. Practically, Europe knew nothing of the several States. She only knew the Confederacy of States. This was still more manifest after the confederation; for then all the national branches of the foreign sovereignty were vested in Congress, as the international representative, as indeed they had been, in all material respects, before. But, when the National Constitution of 1789 was adopted, beyond all question, under that, *every atom of foreign sovereignty* is stripped from the States, and vested in the new government. *Every attribute of international existence* is parted with: and no State can ever be repossessed of any one of

them, but by a successful civil war, or the consent of the rest to a dissolution of the Union, and the restoration of this ceded authority to the State.

South-Carolina, *practically*, never was known *as a nation*. The very idea would excite a smile, in every Cabinet of Europe. *Theoretically*, as well as *practically*, she is now, beyond all doubt, utterly unknown, by her own act, under the Constitution of 1789. It would be idle to talk to European nations about reserved rights. The answer would be, we know you not. We know the Government of the United States: the President, as the head of the *Diplomatic* Department; the President and Senate, as the Treaty making authority; the President, Senate and House of Representatives, as the war-declaring power. These we know, and, as represented by them, we know THE UNITED STATES as ONE *Nation*. But who are you? Your own act justifies and requires us to regard you as *not a nation*, as only a part of one.*

Let us follow out the consequence of these views, by considering what means South-Carolina has for redressing herself, *under the Law of* Nations. The answer is—None, absolutely none at all; unless she obtains the consent of the Union to her independence, or forces it from them by war, or establishes it de facto, by a successful war, without any recognition. Now, each of these things is equally impossible. The other States will not consent: and I presume, the proudest Carolinian cannot believe, that she could establish her independence, in a war against the Union, if both parties, as would be the case, in such an event, should do their best.

Let us go on. South Carolina insists that Congress has violated the compact. She resolves, in any capacity, that you please, by her Legislature, by a Convention, by popular meetings throughout the State, that she will not submit;

* "It is only in our *united* character, that we are known as an empire, that our independence is acknowledged, that our power can be regarded, or our credit supported abroad." Washington's Letter of 8th June, 1783, to the Governors of the States. 5 Marsh. Wash. p. 48.

that the Tariff is and shall be a nullity, within her limits; that not a dollar of revenue shall be collected under it; that goods imported, shall be received by the Merchant, without the formalities of the Custom House, and, in the style of Pennsylvania, in her act against the District Court of the United States, that the parties, refusing obedience to the laws of the Union, shall be protected by the State Executive. Be it so, the Union can regard her in no other light than as a refractory, rebellious member, resisting the laws of the Union; and liable, therefore, under the compact, to have her own, or the Militia of any other State, marched into her territory, *to execute the laws of the Union*, as was done in the insurrection of Shays, and the Whiskey insurrection. But the Union has no occasion for any such measures. She needs not to draw a sword, or march a single soldier into her territory. To Carolina it would be said, "We have made a law, which we, and the great body of the States and People, regard as constitutional. You say it is not so, and resist the supreme law of the land. You have seized our Custom House: you have expelled our officers: you have denied your obligations to us: you have declared Charleston, Georgetown, and Beaufort, free ports; where all nations may trade at pleasure, in violation of our laws. We, therefore, pronounce you, in the presence of the world, an outlaw from the Confederacy, and rebels against the nation. But we shall not strike a blow, nor shed a drop of blood. We shall blockade your ports. We shall place our troops along the frontiers of Carolina, to cut off her intercourse with the neighbouring States." Then, like the girdled tree, Carolina must perish. Foreign nations cannot notice her, or treat with her, without a palpable violation of the international rights of the Union. She can have on her seaboard neither exportation nor importation; nor can she along her frontiers, without smuggling. Of no avail then are her free ports and Custom Houses, and revenue system.

But the Union need not go even thus far. All that is material for them to do is, to cut off all communication by sea,

with *foreign* powers, and Carolina becomes the reservoir to feed the Commerce of North-Carolina and Georgia. It will be the direct interest of North-Carolina and Georgia to have Carolina precisely in this situation; for their merchants would do all the export and import business of South-Carolina. And would we trust to the magnanimity of Georgia and North-Carolina in such a case? I at least, would not; for I never will confide in the generosity of a sister State, when I know that an immense interest is in opposition to that feeling. In the mean time, the Government of the Union would persist in her Tariff system, and Carolina would have to add the expense of dependence on her neighbours, (to say nothing of the humiliation) to the duties already existing.

Let the Union station their ships along our coast, let them declare us in a state of rebellion, and it is obvious, on the principles already explained, that no foreign power can notice us; but at the peril of hostilities with the United States. There is but one nation that could think of such a result, for a moment. But what could induce even England to side with Carolina, to break the blockade, to trade with a part of the nation, against the authority of the rest? No sufficient motive could be assigned for England thus to become the enemy of the United States. Her commerce would still enjoy all the benefits which it now enjoys, whereas the whole commerce with America would be cut off, if she should interfere. The question would not be, whether she should exchange the Tariff restrictions, now of force in Carolina ports, for none at all, or very light ones in the same ports; but whether she should break up all her intercourse with all the rest of the Union, for the sake of very doubtful advantages in the ports of Carolina. Besides, would not England see, that the instant she acted that part by us, the United States would immediately act the same part by discontented Ireland? Would she exchange Ireland for Carolina, and that would be the reward of her folly; and the amount of her gain and her loss?

Let us now look back on a preceding state of the case.

Carolina has declared the Tariff a nullity, she has resisted the Laws of the Union, she has siezed the Custom House, and forts, and dispcssessed the Officers of the Union. Congress has declared her in a state of rebellion : and her coast is beset with the navy of the Union. Is there any man so b ereft of his senses, as not to know, that such a state of things would produce tremendous evils to Carolina, totally separate from the horror of war ? Are we prepared to estimate the instantaneous depreciation of property, the fall of bank stock, the ruinous state of private credit, and the freezing point, to which Bank credit, and Bank bills would immediately sink ? If it concerned only the foreign creditor, or the creditor of other States, perhaps you might think it a light matter ; but there is not a creditor in the State, who would not receive a deadly blow, yet not more deadly to him, than to the debtor. What becomes then of your Bank of the State ; with its capital of almost nothing but debts ? What becomes of your Financial Department, and of your resources ? Do you think that the public debt of South-Carolina would sustain no depreciation ? Those, who look at such events with the eye of experience, know what a shock it would sustain. Yes, they know, that even the hallowed gift to the family of Jefferson would not be spared by the remorseless fiend of Civil Discord.

Carolinians have been fond of ascribing to their Northern brethren an intermeddling spirit, on the subject of slavery. And will Carolina thus take off the only restraint, now imposed, viz. that of the Union ? Is she afraid of the misguided philanthrophy, of the absurd notions of speculative right, of the fanaticism, which she indignantly attributes to the North, and even to the Middle States ? And will she afford them the golden opportunity of doing ten times the mischief they can now do ?

But let her add the horrors of a War to all the above enumerated evils. Does she not see, that the first effect is a still more dreadful depreciation of all property, of public and private credit ? Will not immense taxes be indispensable, and that with very reduced means of paying ? Must

not your military force be great, and a dreadful expense to you? Must not your Government necessarily become a very strong, almost a military Government, in its Executive Department? Must not the rights of property, and of personal liberty be continually endangered? Must not your Courts of Justice be shut, because you must interfere between the debtor and the creditor? And do we believe that, in this state of things, we incur no risk of servile insurrection? At all events, is it not obviously what must be guarded against, by expensive precautions? Let us add to all these horrors, the state of feeling, in every man who has feeling, and especially in the Father and the Mother, when they behold the Son, whom they had trained to peace, become the victim of War, and him, whom they had taught to love and defend the Union, called forth to fight against it?

If the matter comes to the extremity of War, must not Carolina seek assistance abroad? Can she hope to stand single-handed against the power of the Union? In vain may she boast of the justice of her cause, or rely on the chivalry of the South. These will not provide her with arms, nor clothe and pay her troops, nor raise her taxes, nor save her credit, nor stay the depreciation of all property, nor calm the gloomy fears, that must beset her. I value a clear conscience and a gallant spirit, in a good cause, as much as any one. But are we so blind as not to see, that there will be an equally clear conscience, and gallant spirit, in as good a cause, on the other side? Let it be *our* consolation and strength, that we fight against *Usurpers*? And will it not be *theirs*, that they fight against *Rebels*? Let us not deceive ourselves, with the idle supposition, that they will feel, that *we* are *right*, and *they wrong*. Even now, they have no doubt of the reverse. And will they doubt less, when passion shall aggravate their feelings towards us, when ambition, and the pride of opinion, and the consciousness of power, and the indignation of resistance, shall turn our representative into our enemy, our guardian into our destroyer?

Nor let us shut our eyes against the inevitable consequence of foreign dependence. And do we desire again to become

a British province, or a miserably degraded Ally of the British Empire? One or the other must ensue; for to foreign aid we must apply, and to no one but England could we apply. If she should decline, we are crushed by the Union: if she should agree, we become a weak, dishonored dependant of British power, whether as an Ally or a Province. And what might we expect to be the result? Assuredly, that whenever it suited England to close the war, she would abandon us, exhausted and ruined, to the will, not of *sister* States, and a *parent* Government, but of an exasperated *enemy*. Adieu then to liberty and independence, to peace and prosperity. What could we expect but to be treated as a conquered country? But if we should be received back into the Union, on the most favorable terms, surely it would be a condition, inexorably demanded, *that South Carolina should pay the War-Debt, and should acknowledge by a solemn public act, that* SHE *had been a* REBEL *against the lawful authority of the Union, that* SHE HERSELF *had broken the national compact.*

Let us not be told, that such things as these can never happen. They will not, if Carolina is discreet and wise: if she is content with *expressing her opinions*, but proceeds not to *acts*; and especially, *if she does not resist the laws of the Union*. But let her add *acts* to *sentiments*, and *resistance* to *denunciation*; and no human power can guarantee her, against all the fatal consequences I have developed. Nor let Carolina deceive herself with the idea, that she may proceed, as far as *she* pleases; but that the Union will not follow her step by step, nor even anticipate her measures, after a while. Let her only make it the case of another State, and be judged by her own judgment, in that case. Suppose Connecticut had denounced and resisted the embargo. Would not South Carolina have looked upon the precedent, as eminently hostile to the dignity, authority, solidity and permanence of the Union? And would she not have expected the National Government to act with promptitude and energy, the instant the state had developed her settled purpose of resistance? South Carolina would have

so judged in the case of another State : and shall she judge otherwise in her own ? When New England was perishing under the anti-commercial system of Mr. Jefferson, like the withered arm of Jeroboam, South Carolina disregarded her remonstrances and threats : and bade her suffer ; because the common authority had so ordained. And if New England had proceeded to *acts*, South Carolina would have pronounced the National Government, imbecile and cowardly, faithless to its trusts, ignorant of its power, and unworthy of its rights ; if the Nation's arm had not vindicated the laws and honor of the Nation. And does Carolina expect the rest of the Union, to be less disposed to vindicate by force, if she shall compel them, the rights and honor of the Nation, than she would be ? Beyond all question, it must be done ; if a State shall actually resist the laws of the Union, whether that State be Carolina or Connecticut, Tennessee or Maryland. Let us then look at the legitimate consequences of her act : and not shut our eyes against them, until—to proceed be rebellion, to retreat be dishonor. Nor let us shrink from the term *rebellion*, which we should not hesitate to apply to Connecticut or New Jersey. To resist the laws of the Union is rebellion, whatever State be guilty of the act : and she must expect to be called a Rebel, precisely under the same circumstances, which would justify her in charging rebellion on another State. Carolinian as I am, I must not, *as a citizen of the Union*, say less of my own State, than I would of another ; I must not, through false delicacy, or a criminal timidity, withhold from the conduct of Carolina, the very name, which belongs to it : I must not be unfaithful to the Union, lest I should be accounted disrespectful to her.

I have thus endeavored to follow out, through all its principal consequences, *the surrender of her foreign or international Sovereignty* by South-Carolina. Let us now return to the point, whence we set out, viz. that relinquishment, and consider the true character of *State Sovereignty*, under the Constitution of the Union ; *for there only can we hope to find it.* If the State had yielded nothing, but the jurisdiction

over international subjects, it is obvious, that she will have lost the most prominent and important attributes of sovereignty; because she ceased to be a *nation*, under the law of nations. But she yielded a large and most important portion of the *highest* attributes of *domestic* sovereignty. She gave up the power to coin money, to emit bills of credit, to authorise any tender but in gold and silver, to pass bills of attainder, ex post facto laws, or those which impair the obligation of contracts, or to grant any title of nobility. She agreed to lay no duties on imports or exports, *but with the consent of Congress*, (except for the execution of her inspection laws, and then they must be not only *necessary* and proper, but ABSOLUTELY *necessary*) and even when laid, she agreed, that *her laws* should be subject to the *revision of Congress*, and that the revenue should go into the *National* Treasury. She agreed to lay no duty on Tonnage, to keep neither troops nor ships of war during peace, to make no compact or agreement with another State, or with a foreign power, nor to engage in war, unless actually invaded, or in such imminent danger as to admit of no delay: and, except in the last instance for the reason there given, she agreed to do none of these things, *but with the consent of Congress*. Nor is this all. She gave to Congress the power, after 1807, to prohibit forever the importation of Slaves: She agreed, in a controversy with a sister State, to be bound by the judgment of the Supreme Court: That Congress should have power to prescribe rules to *her* Courts, as to admitting the records of another State. She has stripped herself of the power to place the citizens of *another* State on any *other* footing, than her own. She has bound herself to deliver up fugitives from justice, and fugitive slaves, servants or apprentices. She has agreed not to divide herself into *two* States, nor to unite herself with another in forming *one new* State, without the consent of Congress.

Nor is this all. She has not required that the Judges and other Officers of the *Union* should be bound by oath to support *her* Constitution and laws; but she has agreed, that all *her* Officers should be bound by oath to support those of the

Union. And, moreover, she has agreed that the Constitution, Treaties and Laws of the Union should be of paramount authority in her own Courts, held by her own Judges, against the requisitions of *her own* Constitution and Laws.

Nor is this all. She has yielded the regulation of commerce with her sister States: the power to regulate the value of domestic and foreign coin; to fix the standard of weights and measures; to grant copy rights and patents; to organize, arm and discipline her own militia; to naturalize, and to pass bankrupt laws: and her own laws for the election of her representatives and Senators in Congress, are subject to the revision of the Union, with the single exception of the *place* for choosing Senators.

Ample and extraordinary as all these cessions are, even these do not complete the list of her surrenders of sovereignty. She has subjected the persons of her citizens to the military control of the President, for purposes *external* to herself, viz. to execute the laws of the Union, to suppress insurrection, and to repel invasion in *another* State.* She has subjected the whole of the property of her citizens, to the taxing power of Congress: and agrees, if *their* law conflicts with *her's*, this shall yield to that. She has empowered the Union to establish Courts, not only of international, but of domestic jurisdiction, within her limits, and these Courts, in numerous instances, try her citizens, dispose of their property, without any regard to her laws, except as Congress

* Charles Pinckney, in his observations on his plan of Government, says, at page 21: "Independent of our being obliged to rely on the Militia, as a security against Foreign Invasions, or Domestic Convulsions, they are in fact the only adequate force the Union possess, if any should be requisite, *to coerce a refractory or negligent member, and to carry the ordinances, and decrees of congress into execution*. This, as well as the cases I have alluded to, will sometimes make it proper to order the Militia of *one* State into *another*."

Mr. M'Duffie, in his Numbers against the Georgia "Trio," says, at page 17—"I should suppose, therefore, that no professional man could hesitate in saying, that a forcible opposition to the judgment of the *Federal* Court, founded upon an *act of congress*, by WHATEVER *State authority* that opposition might be authorised, would be *the very case* which the Convention had in view, when they made provision for "calling forth the militia *to execute the laws of the Union*."

might choose to adopt them, and are totally independent of her. Thus, then, the State has stripped herself of sovereignty in two ways—1st, by *transfer*, and 2dly, by *prohibition*. Under the first head, she has vested in the Union, all her *international* or *foreign* jurisdiction : all the regulations of trade with her sister States, and with the Indians ; in a word, every thing common to herself and the other States. Under the second head, she has renounced (never to be resumed but by an amendment of the National Constitution) large and important portions of *domestic* sovereignty, and has admitted the Government of the Union to a *concurrent* jurisdiction with her own State authorities, over extensive and valuable branches of *local* jurisdiction, such as taxes, customs, courts, the militia, &c. : and even in such cases of *co-equal* right, she grants that *her* laws and not those of the Union shall give way, if they conflict. And to cap the climax of *concessions to the Union*, and of *restrictions on herself*, she binds all her officers under oath, to support the Union, and lays down her State sovereignty, in all its Departments, Executive, Legislative and Judicial, at the feet of the Constitution, Treaties and Laws of the Union, *as the Supreme Law of the Land*.

Such is the faithful picture of State sovereignty, as drawn by Carolina herself, in the Constitution of her own adoption, and which she is bound to obey. And is she then a *Sovereign* State, in any proper, comprehensive sense of the word ? Consider the gigantic powers vested in the Union, coextensive with the world, embracing every nation under heaven, regulating a commerce, that traverses every sea, levying armies and building navies, pervading every State in the post office and judicial establishments, in taxes, customs, and excises, in the naturalization, bankruptcy and militia systems. Consider that the National rulers can suspend the Commerce of the State, can prohibit both exportation and importation, can march armies through her, can establish camps within her, can involve her in war,* and

* "These powers," (to lay and collect taxes, &c.) "are granted in the

keep her in it, and all this against the *unanimous* vote of *her* delegation in both Houses of Congress, and against the unanimous remonstrance of *all her* People? Is this *Fiction*? Is it *Rhetoric*? No—It is *Historical truth*: it is *Constitutional matter of fact*. And is South-Carolina, then, a Sovereign State? I answer No—The Union is emphatically Sovereign, not South-Carolina. The Union is endowed with *National*, the State has only retained a *Corporate* Sovereignty. The Union is vested with *all* Sovereignty, foreign and domestic, suited to *its* ends: the State has *only* a *local* jurisdiction, suited to *its* ends, within its own corporate limits; and that, subject in many important particulars, to the *local* authority of the Union, within the very same limits. The Union is uncontrollable by the State, the State is subject to the Union. And shall we still delude ourselves with the notion of State Sovereignty? Let those, who do so, read the language of Charles Pinckney, in his Observations on the Plan of Government, submitted by him to the Convention. He is speaking of the necessity of a *revising* power as to the *acts* of the *States*: and considering it as a question of *political expediency*, he proposes that Congress should have this power. As the Constitution now stands, the same end is attained, as far as desirable, by vesting the superintending power, in the *National Judiciary*, as a matter of *Constitutional Law*. Mr. Pinckney says:

"I apprehend the true intention of the States in uniting, is to have a firm National Government, capable of effectually executing its acts, and dispensing its benefits and pro-

most general and unlimited terms. Upon the discretion of Congress in "laying and collecting taxes," and in "raising and supporting armies," there are *no restrictions, but those imposed by nature*. Congress may push these powers *to the utmost verge*, indicated by the physical capacity of the country. They may, upon the slightest occasion, and for the most unwise, improvident, and wicked ends, draw from the people (of the "States" too,) *the uttermost farthing*, that can be spared from their suffering families, to fill the national coffers; and call out *the last man* that can be spared from raising *the necessaries of life, to fill the national armies, and fight the battles of ambitious rulers*. And all this, *however inexpedient, unjust and tyrannical*, they can do, without transcending the limits of their constitutional authority."

tection. In it alone can be vested *those* powers and prerogatives, which *more particularly* distinguish a *Sovereign State*. The members, which compose the superintending Government, are to be considered *merely as parts of a great whole*, and only *suffered* to *retain* the powers necessary to the administration of *their State systems*. The idea, which has been so long and falsely entertained *of each being a Sovereign State*, *must be given up*; for it is absurd to suppose there can be *more than one Sovereignty* within a Government. The States should retain nothing more than that *mere local* legislation, which, *as Districts of a General Government*, they can exercise, more to the benefit of their particular inhabitants, than if it was vested in the Supreme Council; but in every foreign concern, as well as in those *internal* regulations, which *respecting the whole*, ought to be uniform and national, *the States must not be suffered to interfere*." p. 12.

"Whatever views we may have of the *importance or retained Sovereignty* of the States, be assured they are *visionary and unfounded*, and that their true interest consists in concentering as much as possible, the force and resources of the Union in one superintending Government, where alone they can be exercised with effect. In granting to the Federal Government certain exclusive national powers, you invest all their incidental rights. The term exclusive involves every right or authority necessary to their execution." p. 14.

"Most of the States have neglected altogether, the performance of their Federal Duties, and *whenever their state policy, or interests* prompted, used their *retained Sovereignty* to the *injury and disgrace of the Federal Head*. Nor can any other conduct be expected, *while they are suffered to consider themselves as distinct Sovereignties*, or in any other light, than as parts of a common Government. The United States, can have no danger so much to dread, as that of disunion; nor, has the Federal Government, when properly formed, any thing to fear, *but from the licentiousness of its members*." p. 15.

"In short, from their example, (of the Ancient and Modern Confederacies) and from our own experience, there can be no truth more evident than this, that *unless our Government is consolidated, as far as is practicable, by retrenching the State authority, and concentering as much force and vigour in the Union, as are adequate to its exigencies*, we shall soon be a divided, and consequently an unhappy people." p. 17.

So much for the sentiments of Mr. Pinckney, one of the members of the Convention: one of the founders of the Constitution, and the man, whose draft resembled much

more (if we judge by the copy annexed to Yates' Debates) the present Constitution, than those of Randolph, Hamilton, or Patterson. Let us now hear the sentiments of George M'Duffie, the able and eloquent vindicator of *Internal Improvements*, against the South-Carolina radical doctrine of strict construction. His Pamphlet, already referred to, written against the Georgia Radicals in 1821, is prefaced by an advertisement, ascribed to the late Representative from Colleton and Beaufort, and which contains a just and eloquent eulogium on the style and sentiments. In the Preface, p. 2, speaking of the argument of the radical Trio, in favor of "a strict and literal construction of the Constitution," he says, "To these views, the Triumvirate added, the tocsin of "STATE SOVEREIGNTY," a note, which has been sounded in the Ancient Dominion with such an *ill-omened* blast, but with no variety, by them, to relieve its *dull and vexatious* dissonance." I proceed now to the extracts, which, I feel satisfied, will excite in those, who have not read the Pamphlet, (published in Charleston in October, 1821) a desire to read such a vindication of National against State rights :

"What security, then, did the Convention, or in other words, "the People of the United States," provide, to restrain *their* functionaries from usurping powers *not delegated*, and from abusing those, with which they are really invested? Was it by the *discordant clamors*, and *lawless resistance* of the *State rulers*, that they intended to "insure domestic tranquility, and form a more perfect union?" Was it by the *offici us interference* of their *inferior agents*, appointed for no other purposes, than those indicated by the State Constitutions, that they intended to "insure *a salutary control* over their *superior agents*?" No—the Constitution will tell you, what is the real security they have provided. It is the responsibility of the Officers of the General Government, *not to the State authorities*, but to *themselves*, THE PEOPLE. This, and this only is *the great conservative* principle, which lies at the *foundation* of *all our political institutions*, and sustains the great and glorious fabric of our liberty. This great truth ought to be kept in constant and lively remembrance by every American." p. 2.

"*The States, as political bodies, have no original, inherent rights.* That they have such rights is a *false, dangerous*

and anti-republican assumption, which lurks at the bottom of all the reasonings in favor of State rights." p. 2.

In speaking of the General Government, he says, "I shall show, that *its* admirable balance can only be jeopardized by the *eccentric* and *centrifugal* tendencies of the *States*." p. 6.

"We are called upon to believe that our federal rulers will use with moderation the very powers, by which ambitious men, have in all ages, built up the monuments of their own aggrandizement, upon the ruins of the Constitution, and amidst the execrations of the people; and yet that these rulers will consummate their ambitious purposes, and *subvert our liberties*, by the *paltry and petit larceny* process of *pilfering little fragments* from the temples of *State sovereignty*." p. 8.

"The Supreme Judiciary of a State would hardly be inclined to usurp jurisdiction over the class of cases, that fall within the *exclusive* and *humble jurisdiction of a common magistrate*" p. 8.

I cite these passages from the Pamphlets of Mr. Pinckney and Mr. M'Duffie, because they have my full approbation, except that I should be unwilling to represent State sovereignty in so humiliating a light, as the national enthusiasm and indignation of Mr. M'Duffie have led him to do. His principles I perfectly approve: and I cannot give a stronger proof of my opinion as to his and Mr. Pinckney's pamphlets, than by declaring, that I think them worthy of a place, in the Library of every American. And when the *National* sentiment of South-Carolina shall revive, as I know that it will, she will republish Mr. Pinckney's Draft of a Constitution, and his Commentary on it, in the pamphlet referred to, as a more glorious monument of Carolina talent and patriotism, than all the radical pamphlets, and Reports, and Resolutions of the present day.

I have thus considered State sovereignty, in its actual character, under the Constitution of the United States, as to international and domestic jurisdiction: and have demonstrated, I trust, that the *Union* is *emphatically Sovereign*, the *State emphatically not Sovereign*: that the *Union* is *emphatically a Nation, at home and abroad*, the *State emphatically not a nation, but a Corporation*, having a *local* authority,

in many respects, *divided with*, in many *subordinate to the Union.*

But, there is another point of view, in which we must contemplate State sovereignty. Nor is it the least important and interesting; since it is that with regard to which the strangest and most pernicious delusion exists. I refer to the radical doctrine of Chief Justice M'Kean, in 3d Dallas, to the doctrine of the Virginia Resolutions and Report of 1798, and to the same, as held by the Georgia Trio, in 1821. It is this doctrine, among others, which Mr. M'Duffie has combated so eloquently and triumphantly in his Numbers, signed, most happily and appropriately, "One of the People."

"As far as I can collect" (says he to the Trio) "any distinct propositions from the medley of unconnected quotations, you have made, on these very important subjects, I understand you to affirm, that in expounding the Federal Constitution, we should be "*tied down to the strict letter*" of that instrument; and that the *General* Government "was not made *exclusive or final judge of the extent of the powers to be delegated to itself*, but that, as in all other cases of compact, among parties having *no common* judge, EACH PARTY HAD A RIGHT TO JUDGE FOR ITSELF:—these may be considered *the concentrated essence of all the wild and destructive principles*, that have ever been advanced, in relation to the subjects under consideration." p. 13.

I have endeavored to show, that the true theory and sound practical construction of the National Constitution is, that the Supreme Court is the final arbiter on all questions of power arising under the National Charter, whether a State or an Individual call in question a law of Congress. But the Georgia doctrine, now adopted in Carolina, asserts, that *the State* has a right *to judge for itself*, and has *lawful* authority to declare *an act of Congress a nullity!* For myself, I hold this to be a most dangerous doctrine, subversive of the peace of the Union, and of the security of the States.

But let us take this doctrine, as the true one, and follow out its consequences: and be it remembered, that it little becomes the good sense and dignity of Carolina, to deceive herself with *paper-blockades* of the General Government. She must be prepared to carry out her opinions into deeds:

and she must count the cost of the deeds, as the harvest of her opinions. If the *State* possesses the Constitutional authority to judge and to decide that the law is a nullity, there is no denying as a legitimate consequence, that she has a right to *act* upon that judgment. Then let her act upon it, and all the fatal consequences already pourtrayed must result from her *decision*, followed out into *acts*. But let us waive this, and take a more peaceful view of the subject. If Carolina can lawfully declare an act of Congress a nullity, is she willing to admit, that *no consequence* is to flow from her solemn judgment. If so, then her *boasted Sovereignty* amounts to *nothing more* than the right of every *individual, to express his opinion of National acts.* This surely will not be the doctrine of Carolina. What then is to be the consequence ? Can she pretend to a Constitutional *veto*, like that of the President, the effect of which is to require two-thirds of both Houses to pass the Law ? If she pretends to this, let her remember, that SHE *interpolates* into the Constitution, a power, not so much as *imagined* to exist there. Does she assert, that HER judgment can *annul* the act of Congress ? What ! when her acts of Assembly, and even her Constitution, are *not the supreme law of the land*, in relation to the Union, is she wild enough to assert. that *a Resolution of her Legislature* is the supreme law of the land, and competent to annul an act of Congress ? If she contends for this, let her remember, that, here again, she is interpolating into the National Constitution, a power, which she never will concede to another State. If she will concede it, and to be consistent she must, then let her beware, and tremble at the consequences. For she must grant that Massachusetts had a right to adjudge the Embargo unconstitutional, and to annul it : that Connecticut had lawful power to say to the President, you shall not have my militia ; that Maryland and Ohio had a right to say to the Bank of the United States, your charter is a nullity, and you shall not do business here : that New York had a right to say, I will protect my citizens in the enjoyment of the exclusive privileges of steam-boat navigation : that Pennsylvania was jus-

tified in empowering her Executive to resist the Marshal of the District Court in executing its sentence: that Kentucky had the right to persist in her land laws, and to maintain them by force against the judgment of the Supreme Court. Such things, and hundreds of others like them, must flow from this doctrine. Whenever any State regards an act of Congress as unconstitutional, she has full power, say these expounders of the Constitution, to annul the law.* But is this act of annulment of no avail? How shall it operate? Shall it exempt her from the obligation to obey the law? Shall the Union be compelled to repeal that law, or the Supreme Court be bound by her judgment? Shall *she only* be liberated from the operation of the law, or those also who think with her, or the whole Union? Are there any land-marks in the Constitution, to serve as guides in answering these questions? There are, on the *National* side of the controversy, but *none* on the *radical* side. This is precisely the state of things, which Washington looked to, when he says that the world will "see, and feel, that the Union, or the States individually, are sovereign, as best suits their purposes, or in a word, that we are *one nation* to day, and *thirteen* to-morrow." 5 Marsh Wash. 73.

But let us take a farther view of this subject. If there be no common arbiter, as I insist there is, then South-Carolina must grant to others, the same right of judgment, which she claims for herself: and if she asserts her right to annul and resist the law, she must grant as a consequence, their right to vindicate and enforce the law. Hence the monstrous absurdity, that in a case of obvious occurrence, (a dispute as to a Constitutional point) the admirable Founders of the Constitution, could devise no other, than the desperate European remedy of leaving the Union and the State, as *Independent*

* "It is the declared will of *the people of the United States*, that every treaty made, by the authority of the United States, shall be superior to the Constitution and laws of any *individual State*; and their will alone is to decide. If a law of a State, contrary to a treaty is not void, but voidable only by a repeal, or nullification by a State Legislature, this certain consequence follows, that the will of a small part of the *United States* may controul or defeat the will of the *whole*." Per Chase J. 3 Dallas, 237. Ware *vs.* Hylton.

Nations, to settle the question *by the law of power, by the Sword!* Will any American believe such a libel on the Patriot Statesmen of 1789? Not so; for she knows, that *the great, the ruling object of the Convention was to make the Union, totally independent of the States: and utterly to disable the States, from interfering with the enactment or execution of the Laws of the Union.* They have totally, disgracefully, miserably failed, if the Trio doctrines, now the adopted foundling of Carolina, be a sound exposition of the Constitution. But they have succeeded, completely and gloriously, if the National doctrine be the true one, that on a question of *political expediency* the PEOPLE are the *final* Judges; on a question of *Constitutional Law, the Supreme Court.*

It will be granted, that to leave the State and the Union, to settle a disputed point, by a *treaty* or by the *sword*, would be a state of things exceedingly to be deprecated. A permanent, authorised arbiter is indispensable to the safety and peace of all. Our system is incomplete without it. If we were now making a Constitution, is it not obvious that to provide such an arbiter, would be a matter of primary duty and interest. Such an arbiter then must exist. The State can shew *not a vestige of title for her claim;* but the Nation shews the clause, which makes *her laws supreme*, and gives to *her judiciary* cognizance of all questions arising under *her* laws. Hence if a State denies (and I deny that *she* has any such authority) that a Law of Congress is Constitutional, there must be, both theoretically and practically, some permanent, constitutional, independent arbiter, exempt from popular prejudices and passions; exposed neither to fear, nor to favor, nor to affection; of clear judgment, serene temper, and tried integrity; of sterling abilities and sound learning; and thoroughly read in the Constitutional history and law of their Country. *Such* a tribunal can only exist *theoretically* in a *National Judiciary*, and we behold it, *practically*, in the *Supreme Court.*

There is one more consideration, that ought to be well considered. Carolina now denies the constitutionality of the Protective System. Let her remember, that all she

says and does, is in the face of the whole Union and of the civilized world. Let her remember, that the Fathers of the Revolution have taught her, that it is *not enough* for a People to *be right;* but that they are bound in duty *to satisfy the world*, that they are right. And how can she do this, when the records of our own country condemn her, as having been warned, and as having acquiesced over and over again; when the wise and good men of 1789 rise up in judgment against her; when her own statesmen, for more than thirty years bear testimony against her; when Washington, and Jefferson, Madison and Munroe all condemn her; when all the States, for thirty years, approved the tariff scheme, and a great majority now approve it; when the whole People ratified it for upwards of thirty years; and but a slender minority now object to it. Let her state such a case to the world, and that world will reply to her in the language of Mr. Jefferson, "*absolute acquiescence* in the decisions of the *majority*, is the *vital* principle of *republics*, from which there is *no* appeal, *but to force*, the vital principle, and immediate parent of despotism."* Let her state *such a case* to her sister States, and they will reply to her in the spirit of Charles Pinckney's Observations :† "I trust *no* government will *ever again* be adopted in this country, whose alteration *cannot* be effected, but by the assent of *all* its members." "Difficult as the forming a perfect government would be, it is scarcely more so, than to induce thirteen separate Legislatures to think and act alike upon one subject—the alterations, that *nine* think necessary, ought not to be impeded by *four*. *So inconsiderable a minority should be obliged to yield.*" Let her turn in disgust from the World abroad and from the States at home, and lay her complaint before the People of the Union, and they will answer her in the language of her own Statesman, George M'Duffie, "*Your* attempt to control *them* (the general government) is peculiarly unbecoming and arrogant. When the officers of the general government do any act, which we think *unauthorised*

* Presid. Mess. p 165. Inaug. Address of March, 1801. † p. 24.

by *our* letter of instructions, *we shall discard them from our service*. But, as long as we continue them in office, and approve of their conduct, *their acts are our's*, and any attempt on *your* part to resist *them*, is an attempt to resist the power that created you (the State authorities)"* Will she turn, indignant and mortified, from the World, from her sister States, from the Nation; and appeal to the departed great and good, the light and honor of former years? Be it so: let her make the appeal, and the greatest and best of the great and good shall arise, and, in his own language to the States in '83, the Father-Patriot shall say to her, "Whatever measures have a *tendency* to dissolve the Union, or contribute to *violate* or *lessen* the *Sovereign* authority, ought to be considered as *hostile to the liberty and independence of America, and the authors of them treated accordingly.*"†

To whom then will Carolina appeal from the judgment of the World and of her sister States, of the People of the Union, and of the departed great and good. Condemned alike, at home and abroad, by the living and the dead, to whom can she appeal? There remains no appeal, but to God and the Sword. And can she deceive herself with the belief, that a God of *Justice*, who denounces vengeance even upon him, who removes the land-marks of a neighbour's field, will favorably receive the supplications of a *State*, to aid *her* in removing *the ancient land marks of the nation, approved even by herself*? Carolina acknowledged, for more than thirty years, the authority of Congress; though, as she now believes, *deeply to her injury*. And can she hope to be favorably heard by a God of *Truth*, who accepts only him, who "sweareth unto his neighbour, and disappointeth him not; *though it were to his own hindrance*?" Let not Carolina deceive herself. She appeals not, a heathen people, to a God of War, capricious and savage, rejoicing in the carnage of battle-fields and the conflagration of cities. She appeals, a Christian people, to a God of Truth and Justice, of Peace,

* "One of the People," page 3.

† 5 Marsh. Wash. p. 47, 50.

and Mercy, and Love. If she means not to mock and blaspheme, let her consider solemnly, that the prayer which she offers, is that God would sustain her courage, and strengthen her arm, in a war of *Fratricide*. And does she believe, that her case is such, as to justify *such a prayer*, so awful and affecting even when just; so horrible and impious if unjust? Does she indeed believe, that if she calls, the Pious through all her borders, will pray for her success? Does she believe, that from the Domestic altar, supplications for victory to her arms, will ascend to Heaven? Does she believe, that the countless temples of the Most High will send up "the effectual fervent prayer of the righteous man," that her powerful enemy may be overthrown, "that the race may not be to the swift, nor the battle to the strong?" Does she believe, that the appointed Ministers of God will offer up, with all their heart and with all their soul, the ardent petition, that she may be Conqueror? The *Warrior*, indeed, may wish that his country should be Victor, *whether right or wrong;* but let *her* remember, that the *Christian* dares not pray for victory to the arms *even of his own country, if she hath gone forth to fight the battles of Injustice*. Let not Carolina then deceive herself. Let her be solemnly convinced, that she can appeal with confidence to the religious feelings of her People; that her cause is the cause of justice and truth, in the sight of God and of Man; that the blood, which her Sons shall pour forth in her service, will be the blood of martyrs; that the lives, which shall be laid down in vindication of her rights, will be precious in the sight of Angels; that the groans of her dying and her wounded will ascend from the battle field of Brothers, like the agonies of the murdered Abel; that in the graves of her slaughtered children, Christian soldiers will lie in their glory, awaiting in peace, the Resurrection of the Just. Let this, indeed, be her settled, religious conviction: and she may believe, that she fights under the defence of the Most High, and abides under the shadow of his wings." Then, indeed, a thousand may fall beside her, and ten thousand at her right hand, but it shall not come nigh her. Then,

indeed, she may feel, that she goes forth, THE PEOPLE OF GOD, TO FIGHT THE BATTLES OF GOD But, if she hath not *this assurance*, *deeply*, *solemnly realized*, she goes forth to battle, condemned by the World, and her sister States, and the Union, cast off by the Spirits of the departed Great and Good, yea, and forsaken even by God himself. She sends forth her children, a band of Parricides, to a war of rebellion against their lawful Rulers; a band of Fratricides, to the slaughter of their Brethren. Without the sympathy of the World, without the acclamations of the Free, without the prayers of the Pious, or the blessings of her God, she sends them forth to the harvest-field of battle, with no resource but the chivalry of the south, with no strength but the SWORD. Then will she reap the reward of the Sword, cruel, remorseless, insatiable. The winding sheet of her sons shall be garments rolled in blood. The gray hairs of her aged men, shall be brought down, with sorrow, to the grave. The venerable matron, the mother and her circle of children, the youthful bride, and the delicate maiden, shall have for their portion, weeping, and lamentation, and griefs, that refuse to be comforted. Then, throughout all her borders, shall be the trembling heart, and failing of eyes, and sorrow of mind. Then from all her households shall ascend the prophetic aspirations of the Ancient People of God—"In the Morning, would God it were Even—in the Evening, would God it were Morning!"

May such a night of desolation and mourning never be the lot of Carolina! May it yet be given to her to feel, as a land of Peace and quietness, that the lot is fallen unto her in a fair ground, that she hath a goodly heritage! May her resentments yet be overruled for good, good to herself and to the Union, good to ourselves, the Carolina of this day, good to our posterity, the Carolina of future years! May this season of fearful gloom be speedily overpast; and our beloved country be permitted again to feel all the holy, delightful influences that flow, as from a fountain of healing waters, from the national fellowship of THE UNION.

NOTES TO THE SPEECH.

NOTE A. PAGE 21.

"I love to contemplate the Government of the Union, as a *Parent* Government: as the Guardian of the State Governments, rather than those of that. I am better pleased to consider the separate existence and independence of the States, as the result of a joint, common act, than the existence and independence of the National Government, as the result of the separate acts of the States. The Declaration of Independence was the *joint*, common act of thirteen States, *already* united, and relying on *mutual* efforts to secure their separate independence. The first of those efforts was the independence of *each:* and the successful resistance of *all* as *one* band, produced the continued union of all. I rejoice that I am able to refer to the following sentiments of a great Statesman Judge (Chief Justice Jay) in confirmation of what I have said:

"All the people of this country were then (before the Revolution) subjects of the King of Great Britain, and owed allegiance to him; and all the civil authority then existing or exercised here, flowed from the head of the British Empire. They were in strict sense fellow subjects, and in a variety of respects one people. When the Revolution commenced, the patriots did not assert that only the same affinity and social connection subsisted between the people of the colonies, which subsisted between the people of Gaul, Britain, and Spain, while Roman Provinces, viz. only that affinity and social connection, which result from the mere circumstance of being governed by the same Prince; different ideas prevailed, and gave occasion to the Congress of 1774 and 1775.

"The Revolution, or rather the Declaration of Independence, found the people already united for general purposes, and at the same time providing for their more domestic concerns by State Conventions, and other temporary arrangements. From the Crown of *Great Britain*, the sovereignty of their country passed to the people of it; and it was then

not an uncommon opinion, that the unappropriated lands, which belonged to that Crown, passed not to the people of the Colony or States, within whose limits they were situated, but to the whole people; on whatever principles this opinion rested, it did not give way to the other, and thirteen sovereignties were considered as emerged from the principles of the Revolution, combined with local convenience and considerations. The people nevertheless continued to consider themselves, in a national point of view, as one people; and they continued without interruption to manage their national concerns accordingly." 3 Dallas, 470. Chisolm *vs.* Georgia. Per Ch. J. Jay.

Mr. Monroe in his Inaugural Address of March, 1817, speaks thus of this Parent Government: "The States respectively, protected by the National Government, under a mild *parental* system, against foreign dangers, and enjoying within their separate spheres, by a wise partition of sovereignty, have improved their police, extended their settlements, and attained a strength and maturity, which are the best proofs of wholesome laws well administered." Presid. Speeches, p. 349. See also 5 Marsh. Wash. 48. It is of this Parent Government that Mr. M'Duffie said, in his answer to "the Trio," in the summer of 1821, "Have we not enjoyed all the happiness, which it is in the power of Government to confer? Where is the man that has felt the oppressive arm of the General Government? *In the whole history of its progress, you cannot point to one single act of oppression.* It has wrested from no man his property, it has deprived no man of his liberty." And this was after the Tariff of 1816 and 1820; and the schemes of Internal Improvement. See the Pamphlet "National and State rights considered," as republished, as has been always understood, by the former Representative from Colleton and Beaufort, with a preface abounding in commendation of the writer and his principles.

NOTE B. PAGE 23.

I cannot do better than to quote here the sentiments of Mr. J. Story, in Terrett *vs.* Taylor, on the subject of cotemporaneous exposition, because they are not only just in themselves, but have a remarkable application to the present opinions of the Legislature of South-Carolina, when contrasted with the opinions held by her from 1789 to 1820.

"It is asserted by the Legislature of Virginia, in 1798 and 1801, that this statute was inconsistent with the bill of rights and constitution of that State, and therefore void. Whatever weight such a declaration might properly have as

the opinion of wise and learned men, as a declaration of what the law has been or is, it can have no decisive authority. It is, however, encountered by the opinion, *successively given by former Legislatures, from the earliest existence of the Constitution itself*, which were composed *of men of the very first rank for talents and learning*. And this opinion, too, is not only a *cotemporaneous exposition* of the Constitution, but has the *additional weight* that it was promulgated or acquiesced in *by a great majority, if not the whole, of the very framers of the Constitution.*" 9 Cranch, 51.

Let me add to this, the sentiments of Chief Justice Marshall, (in M'Culloch *vs.* Maryland, 4 Wheat. 401) sentiments equally honorable to him as a Judge, a Patriot and a Statesman: "It will not be denied, that a *bold and daring usurpation* might be resisted, after an acquiescence still longer and more complete than this. But it is conceived, that a *doubtful* question, one on which human reason may *pause*, and the human judgment be *suspended*, in the decision of which *the great principles of liberty* are not concerned, but the *respective* powers of those who are *equally the representatives of the people*, are to be adjusted; if not put at rest by the practice of the Government, ought to receive a considerable impression from that practice. An exposition of the Constitution, *deliberately established by Legislative acts*, on the faith of which an *immense* property has been advanced, ought not to be lightly disregarded."

I shall add the sentiments of Mr. M'Duffie, from his Numbers signed "One of the People," addressed to the Radical Trio of Georgia: in which, speaking of Washington, Hamilton and Madison, he says, "For if you are sincere in your professions of attachment for the "principles of the Revolution" and of the Federal Constitution, and are not acting a part in a great political manœuvre; if you are honestly seeking for the *truth of principles*, and not for the means of individual aggrandizement; to what *oracles* could you have applied, so likely to give you an *unerring* response, as the immortal Patriots and Statesmen, whose names I have just mentioned?" p. 10. Thus said Carolina in 1821, by the pen of George M'Duffie; for no one can doubt, that even after that time, the radical doctrines of Virginia and Georgia were alien to the great body of the people, and to the Legislature of South-Carolina. Witness the Report and Resolutions of Mr. Prioleau in December, 1824.

Let me add, on the subject of cotemporaneous and continued exposition, the sentiments of Mr. Madison, when he returned the U. S. Bank Bill on 30th January, 1815, with his reasons (on account of its inexpediency) for not signing

it. "Waiving the question of the Constitutional authority of the Legislature to establish an incorporated Bank, *as being precluded in my judgment* by *repeated recognitions*, under varied circumstances, of the validity of such an institution, in acts of the Legislative, Executive and Judicial branches of the Government, *accompanied* by indications, in different modes, of *a concurrence of the general will of the nation*, &c. &c." Senate Journal, 3d Session, 13th Congress, p. 309. Mr. Madison had opposed the Charter of the old Bank in 1791, as unconstitutional: and yet, he felt himself bound, *as President*, to yield his opinion to the exposition of precedents: and had he opposed the Tariff act of 1789, on a similar ground, he would, on the same principle, have withdrawn his objections to the Tariff bill of 1816. That Mr. Madison entertained no doubt on the Constitutionality of the Bank, is manifest from his Message of 5th December, 1815, (Presid. Speeches, p. 329)—"If the operation of the State Banks cannot produce this result, the probable operation of a NATIONAL Bank, will merit consideration:" and if aught were necessary beyond this, it would be found in the fact, that he signed and approved the Charter of 10th April, 1816, and rejected the Bonus bill, on a ground, totally unconnected with any objection to the Bank. Senate Journal, 2d Sess. 14th Congr. 3d March, 1817, p. 406.

NOTE C. PAGE 26.

The protective authority of a well regulated, independent Judiciary cannot be too highly prized. And it is a remarkable and interesting fact, that with the single exception of cases of Prerogative, even the King in England is obliged to go to his Courts for justice, and, in like manner, the State and the United States in this country, are obliged to do the same; because the right of Jury trial must remain inviolate. If a debt is due to the State, if the public buildings are injured, if the public lands are trespassed upon, if a public officer is guilty of neglect of duty or usurpation of power, there is no *short-handed summary* method of conviction and punishment. The Defendant cannot be deprived, but by his own act, of a fair and complete trial. Thus, even in England, the King's high officer, his Secretary of State, is liable, as well as his agents, for an illegal warrant of commitment: and all the power of the Crown could not screen them, from the responsibility to English Judges and English Juries. See the cases of General Warrants; Entick *vs.* Carrington, 11 St. Tr. 317, 9; and Beardmore *vs.* Earl of Halifax, (Sayer's Damages, p. 228) in

which the Plaintiff recovered 1500*l*. There is nothing so admirable in the English system, as the protective character of Courts of Justice: nor is there any thing more so in our American schemes of society and government, than the calm, impartial, fearless administration of justice, between the Union and a State, between that and a private citizen, and between this and humble individuals. Truth and justice are indeed full of dignity and beauty; and Courts, rightly estimated, are venerable and holy. They are the Guardian Angels of life, liberty, character and property. They are neither disgraced by the crimes and follies of the parties before them; nor can they be honored by the rank and power of suitors. They are clothed, as Ministers of Justice, with power, dignity, authority, more pure and elevated, more sacred and durable, than the presence of Kings or States can bestow.

NOTE D. PAGE 35.

I republish here the Resolution of the Legislature of South Carolina in 1821, (A. A. p. 69.) because it becomes Carolina, if she loves consistency, to reconcile *that* judgment with her denunciation of the Constitutionality of the Tariff; when no one can doubt, that the power in the latter is of a more obvious character than in the former case, since the Tariff rests on a host of evidence of various descriptions, nothing like which attends the case of the Bank.

"*In the House of Representatives, Dec.* 11, 1821.

"The Special Committee, to whom were referred the resolutions from the several States of Pennsylvania, Ohio, New-Jersey, Vermont and Illinois, beg leave to *Report*, That they have had the same under their consideration, and find, that the State of Pennsylvania, by its resolution, has proposed an amendment to the Constitution in the words following, to wit: That "Congress shall make no law to erect or incorporate any bank or other monied institution, except within the District of Columbia; and every bank or other monied institution, which shall be established hy the authority of Congress, shall, together with its branches and offices of Discount and Deposit, be confined to the District of Columbia;" in which that State requests the concurrence of her sister States: That the States of Ohio and Illinois have concurred with Pennsylvania in the proposed amendment; and that the States of New-Jersey and Vermont have disagreed thereto. Your committee are unanimously of opinion, that as Congress is constitutionally vested with the right to incorporate a bank, it would be unwise and impolitic to restrict

its operations within such narrow limits as the District of Columbia. They apprehend no danger from the exercise of the powers which the people of the United States have confided to Congress; but believe that in the exercise of these powers, that body will render them subservient to the great purposes of our national compact. Your committee therefore beg leave to recommend to this house the following resolutions:

Resolved, That the Legislature of the State of South-Carolina do not concur in the amendment of the Constitution of the United States, proposed by Pennsylvania in the following words:—"Congress shall make no law to erect or incorporate any bank or other monied institution, except within the District of Columbia; and every bank or other monied institution which shall be established by the authority of Congress, shall, together with its branches and offices of Discount and Deposit, be confined to the District of Columbia."

Resolved, That the Governor of this State be requested to transmit copies of the foregoing resolution to the Executives of the several States, with a request that they lay the same before the Legislatures thereof.

Resolved, That the house do agree to the report. *Ordered*, That it be sent to the Senate for concurrence.

By order of the House,
R. ANDERSON, C. H. R.

In the Senate, Dec. 12, 1821.

Resolved, That this House do concur with the House of Representatives in the foregoing report. *Ordered*, That the report be returned to the House of Representatives.

By order of the Senate,
WM. D. MARTIN, C. S.

NOTE E. PAGE 35.

I copy here these Resolutions of Virginia, in Jan. 1810, from a Note to Cohens *vs.* Virginia, in 6 Wht. p. 358, N. A. which as it is a book almost exclusively confined to the Profession of the Law, may be considered as inaccessible to the great mass of the Intelligent. This, and the South Carolina Resolutions of 1821 as to the Bank of the United States, are fair specimens of the sound and sober judgment of Virginia and South Carolina, when acting dispassionately and deliberately on the cases of *other* States.

Extract from the Journal of the Senate of the Commonwealth of Virginia, begun and held at the Capitol in the city of Richmond, the 4th day of December, 1809.

"*Friday, January* 26, 1810.

"Mr. Nelson reported from the committee to whom were committed the preamble and resolutions on the amendment proposed by the Legislature of Pennsylvania, to the Constitution of the United States, by the appointment of an impartial tribunal to decide disputes between the States and Federal Judiciary, that the committee had, according to order, taken the said preamble and resolutions under their consideration, and directed him to report them without amendment. And on the question being put thereupon, the same were agreed to unanimously, by the House, as follows: The committee to whom was referred the communication of the Governor of Pennsylvania, covering certain resolutions of the Legislature of that State, proposing an amendment to the Constitution of the United States, by the appointment of an impartial tribunal to decide disputes between the States and Federal *Judiciary*, have had the same under their consideration, and are of opinion, that a tribunal is already provided by the constitution of the United States, to wit: the Supreme Court, more eminently qualified from their habits and duties, from the mode of their selection, and from the tenure of their offices, to decide the disputes aforesaid, in an enlightened and impartial manner. The members of the Supreme Court are selected from those in the United States who are most celebrated for virtue and legal learning, not at the will of a single individual, but by the concurrent wishes of the President and Senate of the United States; they will therefore have no local prejudices and partialities. The duties they have to perform lead them necessarily to the most enlarged and accurate acquaintance with the jurisdiction of the Federal and State Courts, together with the admirable symmetry of our Government.

The tenure of their office, enables them to pronounce the sound and correct opinions they may have formed, without fear, favour, or partiality. The amendment to the Constitution proposed by Pennsylvania, seems to be founded upon the idea that the Federal judiciary will, from a lust of power, enlarge their jurisdiction, to the total annihilation of the jurisdiction of the State Courts; that they will exercise their will, instead of the law and the Constitution. This argument, if it proves any thing, would operate more strongly against the tribunal proposed to be created, which promises so little, than against the Supreme Court, which, for the reasons given before, have every thing connected with their appointment, calculated to insure confidence. What security have we, were the proposed amendment adopted, that this tribunal would not substitute their will

and their pleasure in place of the law? The Judiciary are the weakest of the three departments of Government, and least dangerous to the political rights of the Constitution. They hold neither the purse nor the sword; and even to enforce their own judgments and decrees, must ultimately depend upon the Executive arm. Should the Federal Judiciary, however, unmindful of their weakness, unmindful of the duty which they owe to themselves and their country, become corrupt, and transcend the limits of their jurisdiction, would the proposed amendment oppose even a probable barrier to such an improbable state of things? The creation of a tribunal, such as is proposed by Pennsylvania, so far as we are enabled to form an idea of it, from the description given in the Resolutions of the Legislature of that State, would, in the opinion of your Committee, tend rather to invite, than prevent a collision between the Federal and State Courts. It might also become, in process of time, a serious and dangerous embarrassment to the operations of the General Government.

Resolved, therefore, that the Legislature of this State do disapprove of the amendment to the Constitution of the United States, proposed by the Legislature of Pennsylvania.

Resolved, also, that his Excellency the Governor be, and is hereby requested to transmit forthwith, a copy of the foregoing Preamble and Resolutions to each of the Senators and Representatives of this State, in Congress, and to the Executives of the several States in the Union, and request that the same be laid before the Legislatures thereof."

Extract from the Journal of the House of Delegates of the Commonwealth of Virginia:

"*Tuesday, January 23d*, 1810.

"The House, according to the order of the day, resolved itself into a committee of the whole house on the state of the Commonwealth, and after some time spent therein, Mr. Speaker resumed the Chair, and Mr. Robert Stanard reported, that the committee had, according to order, had under consideration, the Preamble and Resolutions of the select committee, to whom were referred that part of the Governor's communication, which relates to the amendment proposed to the Constitution of the United States, by the Legislature of Pennsylvania, had gone through the same, and directed him to report them to the House without amendment; which he handed in at the Clerk's table, and the question being put on agreeing to the said Preamble and Resolutions, they were agreed to by the House unanimously." Wheat. Rep. vol. 6, p. 358, Cohens *vs.* Virginia.

NOTE F. PAGE 38.

If the objection had been taken, in the case of the Law of Ohio, which was taken in the case of the State *vs.* Allen, 1st M'Cord, p. 525, (Ante p. 27) viz. that the sum imposed was a *penalty*, and not a tax, though professing to be such, a prohibition would undoubtedly have stopped the Ohio Tax-warrant, and have driven the State, with all her sovereign authority around her, to a court of justice, to recover the penalty.

NOTE G. PAGE 40.

Decisions of the Supreme Court.

No. 1. Declaring Acts of Congress unconstitutional: Pension Law, 2 Dall. 410, N. 1792; Marbury *vs.* Madison, 1 Cranch, 137, 1801.

No. 2. Declaring Acts of Congress constitutional: Chisolm *vs.* Georgia, 3 Dall. 429, 1793; Hilton *vs.* United States, 3 Dall. 171, 1796; Fisher *vs.* Blight, 4 Cranch, 358, 1805; United States *vs.* Brigantine William, 2 Amer. Law Journal, p. 255, 1808; M'Culloch *vs.* Maryland, 4 Wheat. 316, 1819; Osborn *vs.* B. U. S. 9 Wheat. 738, 1824.

No. 3, Declaring State Laws Constitutional: Cooper *vs.* Telfair, 4 Dall. p. 14, Georgia, 1800; Houston *vs.* Moore, 5 Wheat. 1, Pennsylvania, 1820; Owings *vs.* Speed, 5 Wheat. 420, Virginia, 1820; Williams *vs.* Norris, 12 Wheat. 117, Tennessee, 1827; Montgomery *vs.* Hernandez, 12 Wheat. 129, Louisiana, 1827; Wilson *vs.* Blackbird Creek Marsh Cy. 2 Pet. 251, Delaware, 1829; Satterlee *vs.* Mathewson, 2 Pet. 380, Pennsylvania, 1829; Bank of Hamilton *vs.* Dudley, 2 Pet. 523, Ohio, 1829; Wilkinson *vs.* Leland, 2 Pet. 627, Rhode Island, 1829.

No. 4, Declaring State Laws Unconstitutional: Georgia *vs.* Brailsford, 3 Dall. 4, Georgia, 1794; Vanhorne *vs.* Darrance, 2 Dall. 304, Pennsylvania, 1795; Ware *vs.* Hylton, 3 Dall. 199, Virginia, 1796; U. S. *vs.* Dorrance, 2 Dall. 371, Pennsylvania, 1797; Clerke *vs.* Harwood, 3 Dall. 342, Maryland, 1797; Ogden *vs.* Blackledge, 2 Cranch, 272, North-Carolina, 1804; Hopkirk *vs.* Bell, 3 Cranch, 454, Virginia, 1806; U. S. *vs.* Peters, 5 Cranch, 115, Pennsylvania, 1809; Fletcher *vs.* Peck, 6 Cranch, 87, Georgia, 1810; New-Jersey *vs.* Wilson, 7 Cranch, 164, New Jersey, 1812; Terrett *vs.* Taylor, 9 Cranch, 43, Virginia, 1815; Pawlett *vs.* Clark, 9 Cranch, 292, Vermont, 1815; Chirac *vs.* Chirac, 2 Wheat. 259, Maryland, 1817; Sturgis *vs.* Crowninshield, 4 Wheat. 122, New-York, 1819; M'Millan *vs.* M'Neil, 4 Wheat. 209, Loui-

siana, 1819 ; M'Culloch *vs.* Maryland, 4 Wheat. 316, Maryland, 1819 ; Dartmouth College *vs.* Woodward, 4 Wheat. 518, New Hampshire, 1819 ; Farmers & Mechanics Bank *vs.* Smith, 6 Wheat. 131, Pennsylvania, 1821 ; Green *vs.* Biddle, 8 Wheat. 1, Kentucky, 1823 ; Society for Propagating Gospel in Foreign Parts *vs.* Wheeler, 8 Wheat. 464, Vermont, 1823 ; Gibbons *vs.* Ogden, 9 Wheat. 1, N. York, 1824 ; Osburn *vs.* B. U. S. 9 Wheat. 738, Ohio, 1824 ; Ogden *vs.* Saunders, 12 Wheat. 213, New-York, 1827 ; Brown *vs.* Maryland, 12 Wheat. 419, Maryland, 1827 ; Plowden Weston *vs.* City Council of Charleston, 2 Pet. 449, South-Carolina, 1829 ; Bank of Hamilton *vs.* Dudley, 2 Pet. 525, Ohio, 1829.

No. 5. Affirming Judgments of State Courts : Olney *vs.* Arnold, 3 Dall. 308, Rhode Island, 1796 ; Calder *vs* Bull, 3 Dall. 386, Connecticut, 1798 ; Mathews *vs.* Zane, 5 Cranch, 92, Ohio, 1809 ; Smith *vs.* Maryland, 6 Cranch, 286, Maryland, 1810 ; Otis *vs.* Bacon, 7 Cranch, 589, Massachusetts, 1813 ; Slocum *vs.* Mayberry, 2 Wheat. 1, R. Island, 1817 ; Gelston *vs.* Hoyt, 3 Wheat. 246, New York, 1818; Houston *vs.* Moore, 5 Wheat. 1, Pennsylvania, 1820; Martin *vs.* Mott, 12 Wheat. 19, New-York, 1827 ; Williams *vs.* Norris, 12 Wheat. 117, Tennessee, 1827 ; Montgomery *vs.* Hernandez, 12 Wheat. 129, Louisiana, 1827 ; Ross *vs.* Doe, 1 Pet. 655, Mississippi, 1828 ; Wilson *vs.* Blackbird Creek Marsh Cy. 2 Pet. 251, Delaware, 1829 ; Satterlee *vs.* Mathewson, 2 Pet. 380, Pennsylvania, 1829.

No. 6. Annulling Judgments of State Courts : Clerke *vs.* Harwood, 3 Dall. 342, Maryland, 1797 ; New-Jersey *vs.* Wilson, 7 Cranch, 164, New-Jersey, 1812 ; M'Kim *vs.* Voorhies, 7 Cranch, 279, Kentucky, 1812 ; Palmer *vs.* Allen, 7 Cranch, 550, Connecticut, 1813 ; Fairfax *vs.* Hunter, 7 Cranch, 604, Virginia, 1813 ; Fairfax *vs.* Hunter, 1 Wheat. 304, Virginia, 1816 ; M'Culloch *vs.* Maryland, 4 Wheat. 316, Maryland, 1819 ; Dartmouth College *vs.* Woodward, 4 Wheat. 518, New Haven, 1819 ; Farmers & Mechanics Bank *vs.* Smith, 6 Wheat. 131, Pennsylvania, 1821 ; Cohens *vs.* Virginia, 6 Wheat. 264, Virginia, 1821 ; M'Clung *vs.* Silliman, 6 Wheat. 598, Ohio, 1821 ; Buel *vs.* Van Ness, 8 Wheat. 312, Vermont, 1823 ; Gibbons *vs.* Ogden, 9 Wheat. 1, New York, 1824 ; Broun *vs.* Maryland, 12 Wheat. 419, Maryland, 1827 ; Weston *vs.* City Council of Charleston, 2 Pet. 449, South-Carolina, 1829.

No. 7. Assenting Appeal Jurisdiction : Mathews *vs.* Zane, 4 Cranch, 382, Ohio, 1808 ; Pawlett *vs.* Clarke, 9 Cranch, 292, 1815 ; Martin *vs.* Hunter, 1 Wheat. 304, Virginia, 1816 ; Cohens *vs.* Virginia, 6 Wheat. 264, Virginia, 1821 ;

Buel *vs.* Van Ness, 8 Wheat. 312, Vermont, 1823 ; Ross *vs.* Doe, 1 Pet. 655, Mississippi, 1828 ; Weston *vs.* City Council of Charleston, 2 Pet. 449, South-Carolina, 1829.

No. 8. Appeal Jurisdiction acquiesced in : Olney *vs.* Arnold, 3 Dall. 308, Rhode Island, 1796 ; Clerke *vs.* Herwood, 3 Dall. 342, Maryland, 1797 ; Calder *vs.* Bull, 3 Dall. 386, Connecticut, 1798; Mathews *vs.* Zane, 4 Cranch, 382, Ohio, 1808 ; Smith *vs.* Maryland, 6 Cranch, 286, Maryland, 1810 ; New Jersey *vs.* Wilson, 7 Cranch, 164, New Jersey, 1812 ; Fairfax *vs.* Hunter, 7 Cranch, 604, Virginia, 1813 ; Otis *vs.* Bacon, 7 Cranch, 589, Massachusetts, 1813 ; Palmer *vs.* Allen, 7 Cranch, 550, Connecticut, 1813 ; Gelston *vs.* Hoyt, 3 Wheat. 246, New-York, 1818 ; Slocum *vs.* Mayberry, 2 Wheat. 1, Rhode Island, 1817 ; Miller *vs.* Nicholas, 4 Wheat. 311, Pennsylvania, 1819 ; M'Culloch *vs.* Maryland, 4 Wheat. 316, Maryland, 1819 ; Dartmouth College *vs.* Woodward, 4 Wheat. 518, New Haven, 1819 ; Houston *vs.* Moore, 5 Wheat. 1, Pennsylvania, 1820 ; Farmers & Mechanics Bank *vs.* Smith, 6 Wheat. 131, Pennsylvania, 1821 ; Gibbons *vs.* Ogden, 9 Wheat. 1, New-York, 1824 ; Martin *vs.* Mott, 12 Wheat. 19, New-York, 1827 ; Weston *vs.* City Council of Charleston, 2 Pet. 449, South-Carolina, 1829 ; Wilson *vs.* Blackbird Creek Marsh Cy. 2 Pet. 251, Delaware, 1829 ; Satterlee *vs.* Mathewson, 2 Pet. 380, Pennsylvania, 1829.

No. 9 States parties nominally and really : Chisolm *vs.* Georgia, 3 Dall. 429, Georgia, 1793 ; Georgia *vs.* Brailsford, 3 Dall. 4, Georgia, 1799 ; U. S *vs.* Peters, 5 Cranch, 115, Pennsylvania, 1809 ; Smith *vs.* Maryland, 6 Cranch, 286, Maryland, 1810 ; New Jersey *vs.* Wilson, 7 Cranch, 164, New Jersey, 1812 ; M'Culloch *vs.* Maryland, 4 Wheat. 316, Maryland, 1819.

No. 10. States parties incidentally : Fowler *vs.* Lindsay, 3 Dall. 411, Connecticut and New York, 1799 ; Handly *vs.* Anthony, 5 Wheat. 374, Ohio and Kentucky, 1820 ; Osborn *vs.* B. U. S. 9 Wheat. 738, Ohio, 1824 ; B. U. S. *vs.* Planters Bank of Georgia, 9 Wheat. 904, Georgia, 1824.

No. 11. Opinions against the President : Marbury *vs.* Madison, 1 Cranch, 137, 1801 ; Little *vs.* Barreme, 2 Cranch, 170, 1804.

No. 12. Opinions in favor of the President : Martin *vs.* Mott, 12 Wheat. 19, New York, 1827 ; Parker *vs.* U. S. 1 Pet. 293, 1828.

No. 13. Opinion against the Secretary of State : Marbury *vs.* Madison, 1 Cranch, 137, 1801.

NOTE H. PAGE 40.

This case was decided in the (old Law) Appeal Court of South-Carolina, by Judges Colcock, Johnson, Richardson and Gantt, against Judges Bay, Nott and Huger. And in the Supreme Court, by Ch. J. Marshall, Judge Story, Judge Washington, and Judge Duval, against Judge Johnson and Judge Thompson.

NOTE I. PAGE 43.

The two first amendments, proposed by the Congress of 1789, (the first as to the apportionment of Representatives, and the second as to the compensation of Members of Congress) have never been adopted. See 1st vol. L. U. S. (authorised edition of 1815) p. 72, and Senate Journal of March, 1791, p. 92. And yet these two first are published with the rest of the twelve in the collection of the Presidents' Speeches, or rather Messages, p 25, with the Acts of Assembly of South-Carolina of 1816, p. 132, and are even spoken of as adopted in 5 Marsh. Wash. p. 209, 210.

NOTE K. PAGE 43.

I apprehend, that his Excellency in his Message, has done great injustice, undesignedly, I doubt not, to the Clergy of the Established Church in Virginia, in 1763. According to Mr. Wirt, in his Life of P. Henry, p. 22, "it seems impossible to deny, at this day, that the *Clergy* had much *the best* of the argument." And again, "the Court very much to the credit of their *candor* and *firmness*, breasted the popular current, by sustaining the demurrer" in favor of the Clergy. p. 22. His Excellency says, "a Church establishment was overset, and a system of tythes and contributions instituted for its support, put down forever." Now there was no controversy, about maintaining or destroying the Church Establishment, nor any about abolishing tythes: and if there had been, and the effort alluded to had been produced, it would then follow, that the Jury had actually overturned a system, founded and secured by all the sanctions of *their own Legislature!* The question was not, whether the Clergy should be paid any tythe at all, but *how much* they should have. They claimed according to the undoubted law of the Province, to be paid in Tobacco, without any regard to its *value;* for the law simply entitled them to 16000 lbs.; while the people contended, under a *repealed* law, that they should have only as much money, as would pay them 16-8 for each pound, when Tobacco was actually worth 50 cents per pound. The principle contended for by Patrick Henry

was subversive of the fundamental, constitutional law of the Colony, about which no man ever doubted, viz.: that the King and Council had a right to annul the Colonial Laws at pleasure. They had done so, as to the act, under which the people claimed: and, therefore, *the only law*, by which the Court and Jury could have been lawfully guided, was that under which the Clergy claimed. It seems impossible to read the account of the trial without regarding the success of Mr. Henry as dishonorable to the cause of right and justice: and, while it is one of the most extraordinary instances of the triumph of eloquence, it is at the same time a melancholy illustration of that skill, which "makes the worse appear the better reason."

But the most singular circumstance, attending the trial, was that the *Judges* should so far have forgotten their duty, upon the Jury's finding a verdict of one penny damages, (when the *Defendants* admitted the Plaintiffs were entitled to 16000 lbs. of Tobacco, commuted at 16-8 per pound,) *as to refuse a motion for a new trial.* If these be the triumphs of eloquence, and these the blessings of Jury Trial, no man of good sense could value either. Happily, however, such an abuse of power on the part of an eloquent man, such disregard of admitted rights by the Jury, and such abandonment of their plain, unquestionable duty, by the Judges, is scarcely to be paralleled

Another circumstance equally singular is this, which I notice on the authority of Mr. Hay, (1 Hen. and Murf. Rep. p. 381, Overstreet *vs.* Marshall,) and on my general recollection of Virginia law. The Action was Debt, on a Statute for 16000 lbs. of Tobacco. Now judgments were entered and executions issued (under the Virginia laws) for *Tobacco*, in the case of a *Tobacco* contract, and not for money. Tobacco was statute money. To the declaration the Defendant pleaded in bar, the Plaintiff demurred. The Demurrer was sustained: of course the plea was set aside, and according to the settled course of practice, judgment *final* by default for the Statute Debt should have been entered forthwith. There was, in fact, nothing to submit to the Jury: any more than there would have in Virginia in the case of a Bond, with a money penalty and money condition; or of a Bond, with a Tobacco penalty and Tobacco condition.

NOTE L. PAGE 44.

On principles of *Constitutional Law*, is it not a *contradiction in terms*, to ask for the *repeal* of an *unconstitutional* bill of a *void* act? On principles of *political expediency*, there

is reason to ask it, in order that those, who would otherwise be disposed to regard it as constitutional, might save themselves and others trouble and embarrassment, by no longer finding it in their way. The Resolutions of the Kentucky Legislature of 10th Nov. 1798, penned by Mr. Jefferson, concludes, " That the Co-States concur in declaring these acts *void* and *of no force*, and will each unite with this Commonwealth in *requesting* their *repeal*, at the next session of Congress." p. 65. The Report of Mr Madison, p. 58, in support of the Resolutions of the Virginia Legislature of 21st Dec. 1798, says at p. 58, " The Legislatures of the States might have made a direct representation to Congress with a view to obtain a *rescinding* of the two offensive acts :" and this is spoken of in the next paragraph, as a *farther* measure, " *after* declaring the two acts to be *unconstitutional*." It would appear by the Pamphlet, reprinted in Charleston last year, from the Richmond copy of February, 1826, that the only States, who returned answers to the Virginia Resolutions disapproved them ; for the only replies given are those of New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New York, and Delaware.

NOTE M. PAGE 45.

" I wish," says Chief Justice Jay, " that the state of society was so far improved, and the science of Government advanced to such a degree of perfection, as that *the whole Nation* could, in the peaceable course of law, be compelled to do justice, and be sued by individual citizens." 2 Dall. 478. Does it not become *Republics* to *act* on the principle of that noble sentiment of a King, Frederick the Great— " Judges ought to know, that the *poorest peasant* is a *man*, as well as the *King* himself. All men ought to obtain justice ; since in the estimation of Justice, *all* men are *equal* ; whether the Prince complain of a peasant, or a peasant complain of the Prince." Don Diego, the son of Columbus, sued Ferdinand before the Council for Indian Affairs, who decided against the King. Louis the XVIth did not feel himself to be degraded by suing Robert Morris in a Pennsylvania Court, 2 Dall. 407 ; and Georgia did not consider herself as dishonored by appearing as a Plaintiff. Georgia *vs.* Brailsford, 2 Dall. 402, and 3 Id. p. 4. The indignity attending a suit against a State, as against an individual, arises from the Defendant's refusing to do, except by coercion, what he ought to have done cheerfully and freely. A suit against Gen. Washington would not have dis-

honored him, if he had had a just defence; but he would have been degraded in universal estimation, if he had refused to do justice, without the compulsory process of the Law. If one great and good man cannot be degraded by a suit against him, if his defence be fair and reasonable; neither can fifty, or a thousand, or a hundred thousand, or a million: and whether they constitute a *mere partnership or company*, or constitute a *Nation*, can make no possible difference, in the estimation of wisdom and virtue, good sense and true honor. I refer with great satisfaction to the admirable remarks of Chief Justice Jay, on this subject, in 2 Dall. 472—3. The conduct of New York and New Jersey, in relation to the Steam-Boat controversy, as testified by their Acts of Assembly, cannot be too much admired, as exhibiting a noble and dignified love of order and peace. The Act of New-York, of 1820, declares, that her jurisdiction on the waters in controversy, had been "hitherto actually and constantly exercised or possessed" by New York, and that it was to be "preserved, maintained and defended by all lawful ways and means, until this State shall be evicted thereof by due course of law;" while that of New Jersey concludes—"Provided always, that nothing in this act contained shall be so construed as to have any operation against any patent right or privilege obtained under the Constitution or Laws of the United States." In speaking of the latter Act, Chancellor Kent expressed the opinion, that the constitutionality of the New Jersey Act was to be decided first by the Courts of New Jersey, and then by the Supreme Court. 4 Johns. Chy. Cas. p. 429, 431, Livingston and Tomkins.

Those who advocate the authority of the National Government to make internal improvements, to protect domestic manufactures, to charter a National Bank, &c. are often charged with a wish to degrade the State Governments to mere corporations. And what, let me ask, are they but corporations? "From the moment of their association," says Chief Justice M'Kean, (1 Dall. 44) "the United States *necessarily* became a *body corporate*," "But still it may be insisted," says Judge Cushing, 2 Dall. 468, "that this will *reduce the States to mere corporations:* and take away all their sovereignty. As to corporations, *all States whatever are corporations*, or bodies politic." In 3 Dall. 473, Chief Justice M'Kean says of our system of Government, "It is in some particulars *National*, in others Federal, and in all the residue Territorial, or in *Districts*, called States." The King in England is called a corporation, 10 Co. 29, b.; and so is the Parliament, 1 Shepard's Abrt. p. 431. "The

word corporations, in its largest sense," says Judge Iredell, 2 Dall. 447, " has a more extensive meaning than people are generally aware of. In this extensive sense, not only *each State* singly, but even the United States may, *without impropriety*, be termed corporations." Whenever, therefore, the advocates of a Government, " *consolidated as far as practicable*," (to use the words of Mr. Charles Pinckney, in his Observations on his Plan of Government, p. 16) shall be charged *with degrading the States into corporations*, they have only to cite as their justification, the sentiments of M'Kean, Iredell and Cushing. For myself, I hold emphatically, that if either party be degraded by the name corporation, it is the Union, and not the States ; for these are appropriately corporations, as will be hereafter shown.

NOTE N. PAGE 46.

I place here, a list of the Judges of the Supreme Court, because I know not any body of men, whom this or any other country has produced, who are entitled to more enlightened admiration, more sincere gratitude, more profound respect for their talents, learning, virtues and services. Theirs, is indeed, a parental guardianship, full of moral dignity and beauty, sustained by the energy of wisdom, and adorned by the simplicity of justice and truth.

Judges of the Supreme Court of the United States from the time of its first establishment ; with the dates of their Commissions :

John Jay, Chief Justice, 26th Sept. 1789 ; William Cushing, Associate Justice, 27th Sept. 1789 ; James Wilson, Associate Justice, 29th Sept. 1789 ; John Blair, Associate Justice, 30th Sept. 1789 ; James Iredell, Associate Justice, 10th Feb. 1790 ; Thomas Johnson, Associate Justice, 7th Nov. 1791 ; William Paterson, Associate Justice, 4th March, 1793 ; John Rutledge, Chief Justice, 1st July, 1795 ; Samuel Chase, Associate Justice, 7th Jan. 1796 ; Oliver Ellsworth, Chief Justice, 4th March, 1796 ; Bushrod Washington, Associate Justice, 20th Dec. 1798 ; Alfred Moore, Associate Justice, 10th Dec. 1799 ; John Marshall, Chief Justice, 31st Jan. 1801 ; William Johnson, Associate Justice, March, 1804 ; Brockholst Livingston, Associate Justice, 20th Nov. 1806 ; Thomas Todd, Associate Justice, 1807 ; Gabriel Duvall, Associate Justice, 18th Nov. 1811 ; Joseph Story, Associate Justice, 18th Nov. 1811 ; Smith Thompson, 9th Dec. 1823 ; Robert Trimble ; John M'Lean, 7th March, 1829.

NOTE O. PAGE 47.

I cannot forbear from giving here some passages from the opinions of the Supreme Court, as specimens of the character of that Tribunal, which, if it needed any other vindication than that, which is recorded in the pages of Dallas and Cranch, of Wheaton and Peters, would find it in the 4th No. of the Southern Review, at page 576, in the article on the Georgia Controversy, ascribed to our Representative in Congress, from Charleston District.

EXTRACTS.

"In delivering my opinion on this important case, I feel myself deeply affected by the awful situation in which I stand. The uncommon magnitude of the subject, its novelty, the high expectation it has excited, and the consequence with which a decision may be attended, have all impressed me with their fullest force. I have trembled lest by an ill informed or precipitate opinion of mine, either the honour, the interest, or the safety of the United States should suffer or be endangered on the one hand, or the just rights and proper security of any individual on the other. In endeavouring to form the opinion I shall now deliver, I am sure the great object of my heart has been to discover the true principles upon which a decision ought to be given, unbiassed by any other consideration than the most sacred regard to justice. Happy should I have thought myself, if I could as confidently have relied on a strength of abilities equal to the greatness of the occasion." By J. Iredell, 3rd Dallas, 256. Ware *vs.* Hylton.

"To the general observations made on this subject, it will only be observed, that as the Court can never be unmindful of the solemn duty imposed on the Judicial Department when a claim is supported by an act which conflicts with the Constitution, so the Court can never be unmindful of its duty to obey laws which are authorised by that instrument." Fisher *vs.* Blight, 2 Cranch, 396. By Chief J. Marshall.

"*That this Court dares not usurp power is most true. That this Court dares not shrink from its duty is not less true.* No man is desirous of placing himself in a disagreeable situation. No man is desirous of becoming the peculiar subject of calumny. No man, might he let the bitter cup pass from him without self reproach, would drain it to the bottom. But if he has no choice in the case; if there is no alternative presented to him but a dereliction of duty, or the opprobrium of those, who are denominated the world, he merits the contempt as well as the indignation of his country, who can hesitate which to embrace.

" That gentlemen, in a case the most interesting, in the zeal with which they advocate particular opinions, and under the conviction in some measure produced by that zeal, should on each side press their arguments too far, should be impatient at any deliberation in the Court, and should suspect or fear the operation of motives to which alone they can ascribe that deliberation, is perhaps a frailty incident to human nature ; *but if any conduct* ON THE PART OF THE COURT *could warrant a sentiment that they would deviate to the one side or the other from the line prescribed by duty and by law, that conduct would be viewed by the Judges themselves, with an eye of extreme severity, and would long be recollected with deep and serious regret.*" 4 Cranch Appendix, p. 506, U. S. *vs.* Burr, per Ch. J. Marshall.

" The duties of this Court, to exercise jurisdiction where it is conferred, and not to usurp it where it is not conferred, are of equal obligation. The Constitution, therefore, and the law, are to be expounded, without a leaning the one way or the other, according to those general principles which usually govern in the construction of fundamental or other laws." By Ch. J. Marshall. B. U. S. *vs.* Deveaux. 5 Cranch, 87.

" That the Legislature can repeal statutes creating private corporations, or confirming to them property already acquired under the faith of previous laws, and by such repeal can vest the property of such corporations exclusively in the State, or dispose of the same to such purposes as they may please, without the consent or default of the corporators, we are not prepared to admit : and we think ourselves standing upon the principles of natural justice, upon the fundamental law of every free government, upon the spirit and letter of the Constitution of the United States, and upon the decisions of most respectable judicial tribunals, in resisting such a doctrine." By Judge Story. Terrett *vs.* Taylor, 9 Cranch, 52.

" In the case now to be determined, the Defendant, a Sovereign State, denies the obligation of a law enacted by the Legislature of the Union, and the Plaintiff, on his part, contests the validity of an act which has been passed by the Legislature of that State. The constitution of our country, in its most interesting and vital parts, is to be considered ; the conflicting powers of the government of the Union, and of its members, as marked in that constitution, are to be discussed ; and an opinion given, which may essentially influence the great operations of the government. No tribunal can approach such a question without a deep sense of its importance, and of the awful responsibility involved in its

decision. But it must be decided peacefully, or remain a source of hostile legislation, perhaps, of hostility of a still more serious nature; and if it is to be so decided, by this tribunal alone can the decision be made. On the Supreme Court of the United States has the Constitution of our country devolved this important duty." By Ch. J. Marshall. M'Culloch *vs.* Maryland. 4 Wheat. 400, 1.

"Questions of this nature are always of great importance and delicacy. They involve interests of so much magnitude, and of such deep and permanent public concern, that they cannot but be approached with uncommon anxiety. The Sovereignty of a State in the exercise of its legislation, is not to be impaired, unless it be clear that it has transcended its legitimate authority: nor ought any power to be sought, much less to be adjudged, in favor of the United States, unless it be clearly within the reach of its constitutional charter. Sitting here, we are not at liberty to add one jot of power to the National Government, beyond what the people have granted by the Constitution: and, on the other hand, we are bound to support that Constitution as it stands, and to give a fair and rational scope to all the powers which it clearly contains." By J. Story. 6 Wheat. 48, Houston *vs.* Moore.

"The questions presented to the Court by the two first points made at the bar, are of great magnitude, and may be truly said vitally to affect the Union. They exclude the enquiry whether the Constitution and Laws of the United States have been violated by the judgment, which the Plaintiffs in error seek to review; and maintain that, admitting such violation, it is not in the power of the government to apply a corrective. They maintain that the nation does not possess a department capable of restraining peaceably, and by authority of law, any attempts which may be made, by a part, against the legitimate powers of the whole; and that the government is reduced to the alternative of submitting to such attempts, or of resisting them by force. They maintain that the Constitution of the United States has provided no tribunal for the final construction of itself, or of the laws or treaties of the nation; but that this power may be exercised in the last resort, by the Courts of every State in the Union. That the constitution, laws, and treaties, may receive as many constructions as there are States; and that this is not a mischief, or if a mischief, is irremediable. These abstract propositions are to be determined; for he who demands decision without permitting inquiry, affirms that the decision he asks does not depend on inquiry.

" If such be the constitution, it is the duty of the Court to bow with respectful submission to its provisions. If such be not the constitution, it is equally the duty of this Court to say so ; and to perform that task which the American people have assigned to the Judicial Department." By Ch. J. Marshall, in Cohens *vs* Virginia. 6 Wheaton, 377.

" The State of New-York maintained the constitutionality of these laws ; and their Legislature, their Council of Revision, and their Judges, have repeatedly concurred in this opinion. It is supported by great names--by names which have all the titles to consideration that virtue, intelligence, and office, can bestow. No tribunal can approach the decision of this question, without feeling a just and real respect for that opinion which is sustained by such authority ; but it is the province of this Court, while it respects, not to bow to it implicitly : and the Judges must exercise, in the examination of the subject, that understanding which Providence has bestowed upon them, with that independence which the people of the United States expect from this department of the Government." By Ch. J Marshall. Gibbons *vs.* Ogden, 9 Wheat. 186.

" This Court has uniformly professed its disposition, in cases depending on the laws of a particular State, to adopt the construction which the Courts of the State have given to those laws. This course is founded on the principles, supposed to be universally recognized, that the Judicial Department of every Government, where such department exists, is the appropriate organ for constructing the Legislative acts of that Government. Thus no Court in the universe, which professed to be governed by principle, would, we presume, undertake to say, that the Courts of Great Britain, or of France, or of any other nation, had misunderstood their own statutes, and therefore erect itself into a tribunal which should correct such misunderstanding. We receive the construction given by the Courts of the nation as the true sense of the law, and feel ourselves no more at liberty to depart from that construction, than to depart from the words of the statute. On this principle, the construction given by this Court, to the Constitution and Laws of the United States is received by all as the true construction ; and on the same principle, the construction given by the Courts of the several States to the Legislative acts of those States, is received as true, unless they come in conflict with the Constitution, Laws, or Treaties of the United States." By Ch. J. Marshall. Elmendorf *vs.* Taylor, 10 Wheat. 159, 160.

" Independently of the consideration, that a decision of the

Supreme Court of the United States, is entitled to the highest respect, in all cases, a decision upon provisions of the Constitution, is emphatically entitled to our utmost respect. I consider that Court as paramount, when deciding on an article of the Constitution, and an act of Congress passed under its express injunction; and whatever might be my individual opinion, I should feel it my duty to surrender it to their controuling authority." By Ch. J. Spencer. Andrews *vs.* Montgomery, 19 Johns. 164.

"But what is the course of prudence and duty, where these cases of difficult distribution as to power and right present themselves. It is to yield rather than encroach; the duty is reciprocal, and will no doubt be met in the spirit of moderation and comity. In the conflicts of power and opinion, inseparable from our very peculiar relations, cases may occur, in which the maintenance of principle, and the administration of justice, according to its innate and inseparable attributes, may require a different course; and when such cases do occur, our Courts must do their duty; but until then, it is administering justice in the true spirit of the Constitution and Laws of the United States, to conform, as nearly as practicable, to the administration of justice in the Courts of the State." By J Johnson, Fullerton *vs.* B. U. S. 1 Pet. 614

"The Judicial Department of every government, is the rightful expositor of its laws; and emphatically of its supreme law. If in a case depending before any Court, a legislative act shall conflict with the Constitution, it is admitted that the Court must exercise its judgment on both, and that the Constitution must controul the act. The Court must determine whether a repugnancy does or does not exist; and in making this determination, must construe both instruments. That its construction of the one is authority, while its construction of the other is to be disregarded, is a proposition for which this Court can perceive no reason." 2d Peters. p. 524. Bank of Hamilton *vs.* Dudley. Per Ch. J. Marshall.

Note. Mr. M'Duffie in his Pamphlet against the Georgia Trio, says thus at p. 17. "It is not less evident that it *belongs* to the *National Judiciary*, to pronounce on the constitutionality or unconstitutionality of the *Laws* of the *National Legislature*. Its jurisdiction extends *to all cases arising under them*; and it is hard to conceive how in any possible case a federal judge, can decide a case arising under a law, without pronouncing on the constitutionality of that law. In fact, it would be in vain and idle to make *the laws of Congress*

supreme, if the National Judiciary had not the power of enforcing them." p. 17.

The Supreme Court is justly characterised by President Monroe, (in his Message of December, 1824, Presidents' Speeches, p. 521) both as to its authority and value :

" The duties of the Supreme Court would be of great importance, if its decisions were confined to the ordinary limits of other tribunals ; but when it is considered that this Court decides, and *in the last resort*, on all the great questions which arise under our Constitution, involving those between the United States, individually, *between the States and the United States*, and between the latter and foreign powers, too high an estimate of their importance cannot be formed."

The Decisions of the Supreme Court on Constitutional Law, are among the noblest Commentaries on our Constitution : and among the most dignified, able and finished specimens of our Political Literature. They ought to be alongside of the Federalist, in the Library of every educated man in the Union. Will not some enterprising Bookseller republish them, simply abbreviating the statement of the case ; but preserving the arguments of Counsel, as well as the opinions of the Judges ?

NOTE P. PAGE 53.

It is somewhat singular, that the Hypercritics of the Anti-Tariff school, should not have discovered, that the term to *regulate* trade, did not contain in itself any power even to *promote* and *encourage trade* itself, but simply *to establish rules* for the government of captains and seamen, of entries and clearances, of the time and mode of paying duties, of the national character of ships, of the number of passengers, seamen, &c. &c. and that, to make any regulation, such as the tonnage act, is a violation of the letter of instructions. The very mode of argument, which shows, that you cannot use this power according to any wise, practical construction, but for the purpose of promoting commerce, *as one great end*, also proves that you cannot promote commerce, without due regard to the *interests of manufactures*, as *inseparable*, on an enlarged view of the subject, from those of commerce.

NOTE Q. PAGE 54.

The present duty on foreign cottons of 3 cents per pound, is obviously a decided advantage to the Planter. If he complains, that the duties on cotton cloths are an *unconstitutional*

bounty to the cotton *manufacturer*, why does he not on principle apply to Congress, to take off the protective duty on foreign cottons, as an unconstitutional bounty to the cotton *grower*? To be consistent, he ought to do this, for Congress, according to his doctrine, has no more authority to protect and encourage *agriculture*, than manufactures. According to my view of the Constitution, Congress has power and is bound to do *both*. As far back as 1790, Alexander Hamilton says, (Rep. on Manuf. p. 260--1) "The present duty of three cents per pound on the *foreign raw* materials, is undoubtedly *a very serious impediment* to the progress of those manufactories." This bounty the Planters have enjoyed all along, since the cotton manufactories have thriven in the United States, and if the time should ever come, when the manufacturers shall apply for the repeal of the duty, (and "to secure to the national manufacturers so essential an advantage, a repeal of the present duty on imported cotton is indispensable," Ham. Rep. on Manuf. p. 261) so as to enable the cotton-grower of Brazil, &c. to undersell our raw material in our home market, I doubt it would produce a greater excitement than the Tariff of 1828.

NOTE R. PAGE 56.

The Life of Washington by Ch. J. Marshall, is a book of which Americans may well be proud: not indeed as a rhetorical composition, for which the ancient Historians are so unreasonably extolled; but as surpassing in the true dignity and usefulness, simplicity and beauty of History, all that can be found in Herodotus, Thucydides and Xenophon, in Livy or Sallust, Cæsar or Tacitus. To be thoroughly versed in the facts, and to be deeply imbued with the spirit of Washington's Administration, is worth more to the citizen of the United States, than the most intimate acquaintance with the whole body of Greek and Roman History. How indeed could it be otherwise, since the sentiments and writings, the conduct and entire character of Washington exhibit more of true glory, and of exalted patriotism, than is to be found in the Statesmen and Heroes of Antiquity. Washington's Letter to the Governors of the States, his Inaugural Addresses, his Messages, and his Farewell Address, are of more value to us, as a text book of national and social morals, of enlightened duty, virtuous moderation, and a dignified yet ardent love of regulated freedom, than all the political wisdom of Ancient History. To Ch. J. Marshall, as a Representative in Congress, as an Ambassador, as a Judge and a Historian, his Country owes an ample debt of gratitude.

May our children's children acknowledge it with pride, and repay it with a thankful, admiring spirit. His will ever be, in American annals, peculiarly and emphatically "clarum et venerabile nomen."

NOTE S. PAGE 65.

If any doubt had been or could have been entertained in 1789, as to the Constitutionality of the Protective System, the following passage from Judge Burke's opinion in the case of Zylstra *vs.* the City Corporation, must satisfy us, that he at least of the five, would have noticed it. "Upon the slender basis of the confined authority which the Corporation really possesses, to erect such a high superstructure, and insist publicly on their right to do so, proves another thing—it serves to illustrate upon a small scale, the intruding, usurping nature of power; and with how much greater than the energy of a wedge, it is constitutionally at work to force open for itself, more elbow room and free license, than foresight itself or reason ever intended." 1 Bay, 388.

NOTE T PAGE 65.

It gives me pleasure to notice, in connection with the history of the Tariff Question, the letters of Mr. Madison to Jos. C. Cabell, in Sept. and Oct. 1828. I regard these as the patriarchal testimony of this venerable Patriot, to the cause of established order, to the sacredness and value of cotemporaneous and continued exposition of the Constitution. There cannot be a stronger proof of the blindness of prejudice, and the suspicious, inexorable spirit of excitement, which prevails in Carolina, than the fact, that these letters of this aged and eminent Statesman, (bearing all the marks of a clear, strong, practical mind) are rejected as utterly unworthy of his earlier years, unworthy of the coadjutor of Washington and Hamilton. But Carolina cannot deprive him of her own homage from 1787 to 1827, freely, gladly yielded to the object of her esteem, admiration and gratitude. Mr. Madison may well leave her to reconcile this inconsistency of sentiment and conduct.

NOTE U. PAGE 71.

Two of the most eminent men of Carolina were the advocates of the Tariff of 1816. In reply to Mr. Randolph's motion to strike out a clause of the bill, Mr. Calhoun said, that, till then, the debate had been confined to the DEGREE of protection to *cotton and woollen manufactures:* that the motion of Mr. R. went on the ground that the manufactu-

TERS *ought not* to be encouraged: that the subject was connected with the *security* of the country: that without manufactures, industry would be without the means of production: that *manufactures*, agriculture and commerce *combined*, were *indispensable* to a *flourishing state of the currency and finances*: that a *system of internal improvements* should be added: that *liberty and union were inseparable*: that DISUNION comprehended almost *the sum of our political dangers.* (Nat. Intell. 22d April, 1816.) On the 8th April, 1816, Mr. Randolph moved to postpone the Tariff bill, on the ground, that *the subject had not been properly matured by the Treasury Department*: and he therefore moved, that the old and new bills should be printed side by side, *that each member might consult his constituents.* Mr. Lowndes denied the charge, he said that circulars had been sent all over the country, and that the bill would be *beneficial* to the *general interests* of the country Mr. R's motion was lost, by a vote of 47 for, and 95 against it.—(Times, 8th April, 1816). It is certain then, that Mr. Lowndes and Mr. Calhoun were *decided advocates* of the Tariff of 1816, and that neither they nor Mr. Randolph imagined *the protective system to be unconstitutional* THEY *never doubted* on the subject; for if they had, we know that they would have acted on the noble principle of Judge Chase, "*Whatever is unconstitutional is incxpedient.*" Show me then the Carolina Statesman of the *present* day, opposed to the Tariff principle, who is to compare with them.

Carolina says, that she is contending for *principle*: all the advocates of her Resolutions of '25, '27 and '28 hold the same language. The Resolutions of '25 and '27 place *internal improvements* on the same footing of principle, as the Tariff. Indeed it seems impossible to deny, both upon principle and precedent, that internal improvement stands upon inferior ground to the Tariff, as a *constitutional* measure. And yet, Carolina sends Mr. M'Duffie as a Representative, and gives her vote to Mr. Calhoun, as Vice President, when she knows, that they are among the ablest and most illustrious advocates of internal improvement. Is THIS THE CONSISTENCY OF PRINCIPLE? As a *Carolinian*, I feel mortified at such a specimen of inconsistency. As a *Citizen of the Union*, I rejoice that the STATE PRIDE of CAROLINA has been victorious over her STATE PRINCIPLES: that Carolina is TOO NATIONAL to sacrifice on the altar of STATE RIGHTS, the most distinguished of her Public Men. May they long be spared to honor and adorn Carolina, *against her principles*, to dignify, illustrate and bless the Union, according to the enlarged views and national policy of those

"immortal Patriots and Statesmen," Washington, Madison and Hamilton!

Gen. Hayne, in his remarks on presenting the Protest of this State, to the Senate of the United States, on the 10th February last, refers to the letter of Mr. Jefferson to Mr. Giles, of 26th Dec 1825, and remarks, "After this, what candid man will pretend to doubt the opinion of Mr. Jefferson? If it can be shown, that on any previous occasion, Mr. Jefferson used language on this subject, susceptible of misconstruction, here is conclusive proof that he died, as he lived "true to the faith." I would refer my friend, Gen. Hayne, to Mr. Jefferson's Messages of Dec. 1801, Dec. 1803, and Nov. 1808: and ask, in his own language, "After these, what candid man can doubt Mr. Jefferson's opinion" of the power of Congress? Who would not rather have the *official* sentiments of Mr Jefferson, in the *responsible* station of *President*, in 1801 and 1808, his first and last annual messages, than his opinion, as a *private citizen*, in 1825? *The former is* PUBLIC OFFICIAL EXPOSITION, *the latter only* PRIVATE INDIVIDUAL JUDGMENT.

But let us grant, that Mr. Jefferson meant that Congress did not possess the protective power, through the *Revenue* system; yet it must be granted, that he did recognize a protective power in Congress If so, what was its nature? If it does not exist under the shelter of duties, where does it reside? Is it to be found in the form of *prohibitions* of rival articles? But the prohibitory power is a part of the power to regulate trade, and of the system of duties: and if you can prohibit *in toto* by *a duty*, amounting to prohibition, you can exercise the same species of power in any less degree: and therefore, you may ascend step by step, from a small beginning, up to the point of prohibition. But, if not found in this form, is it in the form of premiums and pecuniary bounties? If so, then it follows, that having authority thus to appropriate the public money, Congress would have the unquestionable power to lay duties for the purpose. Thus it cannot be denied, that the revenue system would be made subservient to the promotion of manufactures: and assuredly the duty would be laid, if wisely laid, with a view to their encouragement in both forms. Thus we might go through the whole list of the means of protection, and every one would be found an inseparable part of the general scheme of regulating commerce, and of laying duties. As then Mr. Jefferson did acknowledge *a protective power in Congress*, it is not very material to the manufacturer, what form it assumes. But, if it be granted, that the *end* (protection and encouragement) may be law-

fully attained by Congress, (and who can deny this, that reads Mr. Jefferson's Messages, p. 66, 67) then it is an obvious consequence. that *all the natural, customary modes* are placed in the hands of Congress, as *means*, among which they are to exercise the power of *selection*.

I cannot forbear to notice here the argument against the propective system, founded on the 10th Sect. of 1st Art. of the Constitution. I had regarded it as a felo de se, according to every rule of good sense and of logic, before I read the confirmation of my own view in Mr. Madison's Letter of 18th Sept. 1828. There is another view, however, founded on the very argument of my opponents, which is to my mind conclusive in favor of the protective power, under the revenue system. Let us grant, that the object of the Convention, in the clause in question, was to enable the *States* to protect *their own manufactures:* and the conclusion is irresistible, that *such protection was regarded as only a* PART *of a* NATIONAL *scheme*. On what ground, are the *State* laws respecting the election of Senators and Representatives, subjected to the controul of Congress, (Art. 1, S. 4.) but that *this* power is a *portion* of *national* power, thus entrusted to the States, subject to the *appellate* jurisdiction of Congress, as the Legislative Depository of national power. On what principle then are the laws of a *State*, laying duties for the protection of its own manufactures, subjected to the controul of Congress, but that *this* also being a *portion* of *national* power, a *part* of a *general* system, the *supervising* authority must be in the *Union*. But the argument does not stop here. Grant that the portion of power thus vested is national, and therefore, properly controllable by Congress; yet the *end* for which the power is used as a means, is according to the position of the enemies of the protective system, *purely local and domestic*, not general and national. And yet the duty laid for *such* an object, is paid, not in the *State*, but into the *National* Treasury. This disposition of the money demonstrates the *end* to be *national*, as well as the *means*. For if Congress have the power to protect manufactures under the revenue system, then both the *means* and *end* being *national*, there is consistency in subjecting the State laws to the revision of Congress, and in appropriating the sum raised, as a *part* of the *national revenue*. But if Congress have *not* the protective power, through the medium of the revenue system, where is the consistency, the justice, the common sense, of using *such* means, for *such* an end, and of applying *local* revenue to *national* purposes? Such, however, is the reductio ad absurdum, to which the construction of this clause by the adversaries of the Tariff,

leads us. Nor must we forget, that according to the above view, they ascribe to the Framers of the Constitution, a monstrous inconsistency; and according to Mr. Madison's answer to the same reasoning, they attribute to the same illustrious men, an act of little less than downright folly.

NOTE † PAGE 95.

I copy here the following passage of the same letter, that it may not be said, I shunned it on account of the character ascribed by Carolina to the 19th Congress, so different from that of the Congress of 1783, as drawn by the pen of Washington:

"If after all a spirit of disunion, or a temper of obstinacy or perverseness should manifest itself in any of the States; if such an ungracious disposition should attempt to frustrate all the happy effects that may be expected to flow from the Union; if there should be a refusal to comply with the requisitions; and if that refusal should revive all those jealousies, and produce all those evils, which are now happily removed; Congress, who have in all their transactions shown a great degree of magnanimity and justice, will stand justified in the sight of God and man: and *the State alone*, which puts itself *in opposition to the aggregate wisdom of the Continent*, and follows *such mistaken and pernicious counsels, will be responsible for all the consequences.*"

Let not Carolina flatter herself, that *her* opinion of the want of magnanimity and justice in the Congress of 1828, will justify her in the eyes of the world. They will condemn her on Washington's principle, that the "aggregate wisdom of the continent" is against her; or Jefferson's, of "absolute acquiescence in the decisions of the majority;" or Charles Pinckney's, that "so inconsiderable a minority should be obliged to yield;" and on that of George M'Duffie, that "the Tariff act is the act of THE PEOPLE." And let Caroliaa remember, that if she objects to the Tariff of 1828, as unjust and oppressive, she objects to it on *political, not on constitutional* grounds; and in such case, her only remedy is petition by the *people*, the *repealing* power of Congress, and the *elective* franchise. But if she insist, that her objection is to its *constitutionality*, she must remember, that she cannot charge Congress from 1789 to 1820, with ignorance and incapacity, or with a want of justice and magnanimity: and yet her opposition and resistance, *if right on Constitutional grounds*, affect equally every Congress, from 1789 to 1828; for whether the protective duty be one cent or fifty, is immaterial.

POSTSCRIPT.

I HAD intended to complete the published Speech, by adding the views taken in one part of the Speech as delivered on the second day, as to the importance, and indeed necessity (on a comprehensive view of the permanent policy of this country) of an extensive and growing manufacturing system. My object was to show, that both theory and experience justified the conclusion, that this country could not possibly be as great, prosperous and happy, without manufactures as with them: that whether we looked at home or abroad, this was equally true: that manufactures were inseparable from the commercial system; and that the promotion of manufactures was one of the most efficient, natural and well established modes of promoting commerce: that the manufacturing interest was, therefore, essentially and permanently, *a national, not a sectional interest:* and that to encourage it was at once the *duty* of the *Government*, and the *interest* of the *People*. The greater importance, however, of the two other subjects, (the Constitutionality of the Tariff, and the doctrine of State Sovereignty) determined me to give them the preference: and when I had finished them, I not only found, that I could not spare the time to do more, but that to add any more to a Pamphlet already of 140 pages was absolutely out of the question.

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